

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

JOINT APPENDIX
VOLUME I

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Nos. 16,206, 16,255, 16,376

497

THE ASSOCIATION OF WESTERN RAILWAYS,
TRAFFIC EXECUTIVE ASSOCIATION-EASTERN
RAILROADS, EASTERN RAILROAD PRESIDENTS
CONFERENCE, et al.,

Appellants,

v.

RISS & COMPANY, INC.,

Appellee.

Nos. 16,206

and 16,376

THE ATCHISON, TOPEKA & SANTA FE RAILWAY
COMPANY; CHICAGO, BURLINGTON & QUINCY
RAILROAD COMPANY; CHICAGO, MILWAUKEE,
ST. PAUL & PACIFIC RAILROAD COMPANY, et al.,

Appellants,

v.

RISS & COMPANY, INC.,

Appellee.

No. 16,255

Appeal from a Judgment of the
United States District Court for the District of Columbia

CONTENTS

Pages 1 to 356

United States Court of Appeals
For the
District of Columbia

FILED OCT 16 1961

Joseph W. Stewart
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INDEX

VOLUME I

Page

1. Relevant Pleadings Filed Prior to and During
Trial and Orders Ruling Thereon.

Complaint, filed September 22, 1954	1
Answer of Byoir, filed October 18, 1954	21
Answer of PRR, filed October 18, 1954	24
Amended Answer and Counterclaim of PRR, filed November 8, 1954	30
Motions of AWR to Quash Return of Service of Summons and to Dismiss, filed December 12, 1954	44
Affidavit of Daniel P. Loomis	45
Affidavit of H. C. Barron	47
Answer and Counterclaim of Atchison, Topeka & Santa Fe Railway Co., filed December 15, 1954	48a
Answer of TEA, filed December 17, 1954	49
Order Dismissing Defendants (42) through (57) and Directing Amendment of Complaint in Accordance with Such Additions and Dismissals, entered December 16, 1954	57
Amendments to Complaint, filed January 6, 1955	58
Order that Complaint be Amended to Conform with Amendments, entered January 6, 1955	62
Interrogatories Directed to AWR, filed January 20, 1955	63
AWR Objections to Plaintiff's Interrogatories, filed January 31, 1955	81
AWR Memorandum of Points and Authorities in Support of Objections to Plaintiff's Interrogatories, filed January 31, 1955	82
AWR Answers to Interrogatories Directed to It by Plaintiff on January 20, 1955, filed February 4, 1955	90
Affidavit of Daniel P. Loomis	95
AWR Motion to Quash Return of Service of Summons or to Dismiss, filed February 8, 1955	95
Affidavit of Daniel P. Loomis	96
Affidavit of P. D. Shoemaker	98
Memorandum of Points and Authorities in Support of Motion of AWR to Quash or Dismiss, filed February 8, 1955	99

	<u>Page</u>
Order Dismissing Defendants (34) and (67), entered February 15, 1955	100
Order Dismissing Defendants (6), (24), (25), (60), (61), (69) and (75), entered February 15, 1955	100
Order Dismissing Defendant (13), entered February 21, 1955	102
Order Granting Motion of Defendant (28) to Quash Service, entered March 21, 1955	102
Ruling from Bench on Motion of Defendant (22) to Dismiss, entered March 22, 1955	103
Order Dismissing Defendant (89), entered March 22, 1955	107
Praeipue of AWR	108
Answers of AWR to Interrogatories Propounded to It on January 20, 1955, filed July 27, 1955	109
AWR Motion for Leave to Amend Answers to Interrogatories, filed August 15, 1955	131
Affidavit of Daniel P. Loomis	131
Affidavit of A. Alvis Layne, Jr. in Opposition to Motions of AWR to Quash Return of Summons or to Dismiss, filed October 6, 1955	132
Affidavit of Joseph H. Hays, filed October 21, 1955	149
Affidavit of A. F. Huckshold, filed October 21, 1955	151
Affidavit of H. C. Barron, filed October 21, 1955	153
Order Quashing the Return of Service of Summons upon AWR and Dismissing the Action Against AWR, entered November 7, 1955	155
Amended Order Quashing Service as to AWR, entered March 22, 1956	156
Notice of Motion of AWR, filed April 11, 1956	157
AWR Motion to Dismiss and to Quash Return of Service, filed April 11, 1956	157
Affidavit of Daniel P. Loomis	159
Affidavit of H. Charles Ephraim in Opposition to Motion of AWR filed April 11, 1956 to Dismiss and to Quash Return of Service, filed May 14, 1956	160

	<u>Page</u>
Motion for Leave to Supplement Complaint, filed July 25, 1956	168
Memorandum in Support of Plaintiff's Motion for Leave to Supplement Its Complaint	169
Plaintiff's Reply to Defendants' Objections to Motion for Leave to Supplement Complaint [Excerpt], filed November 16, 1956	170
Order Granting Leave to Supplement Complaint, entered January 28, 1958	174
Complaint as Supplemented, filed January 31, 1958	176
Answer of TEA to Complaint as Supplemented, filed February 17, 1958	196
Answer to Complaint as Supplemented and Counterclaim of PRR, filed February 18, 1958	199
Counterclaim	201
Count I, Count II	201
Count III	202
Answer to Complaint as Supplemented and Counterclaim of Santa Fe, filed February 18, 1958	204
Counterclaim	205
Count I, Count II	205
Count III	207
Supplement to Answer of Byoir, filed February 21, 1958	209
Opinion Denying Motion of AWR to Dismiss for Improper Venue and to Quash Service of Process, entered February 25, 1958	209
Order Denying Motion of AWR to Dismiss Complaint and to Quash Return of Service, entered March 3, 1958	218
Order that Riss Delaware be Substituted for Riss Colorado, entered March 17, 1958	219
Answer of ERPC to Plaintiff's Supplemental Complaint, filed March 18, 1958	219
Motion of AWR to Vacate and Set Aside the Order Entered by Court on March 3, 1958, filed March 28, 1958	226
Affidavit of Walter R. Nugent	226

	<u>Page</u>
Affidavit of Thomas H. Maguire, filed April 9, 1958	228
Affidavit of Fred A. Piehl, filed April 9, 1958	229
Affidavit of Walter R. Nugent, filed April 9, 1958	230
Stipulation that Pages of Joseph H. Hays' Deposition of August 1, August 2, 1955 Be Considered as Part of the Record, Together with Pertinent Pages of the Deposition, filed April 22, 1958	231
Answer of Plaintiff to Supplemental Counterclaims of Western Railroads, filed April 28, 1958	246
Answer of Plaintiff to Supplemental Counterclaim of PRR, filed April 28, 1958	250
Memorandum of Court Denying AWR Motion to Vacate Order of March 3, 1958 Denying AWR's Previous Motion to Dismiss for Lack of Proper Venue, filed April 29, 1958	254
Order Denying Motion of AWR to Vacate Order of the Court Entered March 3, 1958, Denying AWR's Previous Motion to Dismiss for Lack of Proper Venue, entered April 30, 1958	254
Answer of AWR, filed May 5, 1958	256
Motion of AWR for Separate Trial on the Issues of Jurisdiction and Venue, filed May 5, 1958	269
Amendment to Answer of ERPC to Plaintiff's Supplemental Complaint, filed May 13, 1958	270
Order Denying Motion of Railroad Defendants to Suspend Further Proceedings Herein, entered May 26, 1958	270
AWR Memorandum for Court re Proposed Order Denying Its Motion for a Separate Trial, filed June 9, 1958	271
Order Denying Motion of AWR for Separate Trial and Striking First Defense of Answer of Said Defendant, entered June 9, 1958	272
AWR Interrogatories to Plaintiff, filed July 9, 1958	272
Plaintiff's Answer to AWR Interrogatories of July 9, 1958, filed January 9, 1959	273

	<u>Page</u>
Opinion of Court Vacating Order of May 26, 1958 and Denying Motion by Certain Railroad Defendants to Suspend Proceedings and to Refer Certain Issues to the ICC for Determination, entered January 16, 1959	274
Order Amending Paragraph 14(B) of Complaint, entered March 6, 1959	304
Answer of PRR to Paragraph 14(B) of Complaint as Amended, filed March 16, 1959	304
Answer of Western Defendants to Amendment to Paragraph 14(B) of Complaint as Supplemented, filed March 17, 1959	305
Answer of ERPC to Paragraph 14(B) of Plaintiff's Supplemental Complaint as Amended, filed March 25, 1959	306
Order for First Pre-Trial Conference, entered March 25, 1959	308
Interrogatories Directed to Defendant Railroads, filed June 26, 1959	311
Order Amending Paragraph 18 of the Complaint as Supplemented, entered June 29, 1959	319
Objections of PRR to Plaintiff's Interrogatories, filed July 30, 1959	321
Affidavit of W. F. Warren	322
Letter to Judge Sirica from Mr. McArdle of 30 July 1959, Stating That Certain Defendants' Answers Stand as to Paragraph 18 of the Complaint Amended by Order of June 29, 1959, filed August 1, 1959	329
Plaintiff's Statement Respecting "Peripheral" Defendants, filed October 5, 1959	330
Appendix "A"	332
Memorandum of Defendants Concerning Damages Under Count II of Their Counterclaims filed October 6, 1959	333
Exhibit I	343
Exhibit II	346
Order Ruling on Defendants' Objections to Plaintiff's Interrogatories filed June 26, 1959, entered October 6, 1959	348

Order Dismissing Action and Complaint as to Defendants (9), (10), (14), (17), (18), (19), (20), (26), (27), (30), (32), (35), (36), (37), (38), (39), (59), (64), (68), (71), (73), (74), (77), (79), (82), (83), (84), (85), (86), (87), (90), and Dismissing Counterclaims Filed by Defendants (9), (10), (17), (18), (19), (26), (27), (32), (36), (37), (38), (39), (71), (73), (74), (79), (87), (90) - filed October 27, 1959	350
Agreement - Riss Acceptance of \$15,000 from Boston & Maine Railroad, dated November 23, 1959	353
Agreement - Riss Acceptance of \$15,000 from New York, New Haven & Hartford Railroad Company, dated November 23, 1959	355

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RISS & COMPANY, INC.,

a corporation

15 West 10th Street

Kansas City, Missouri,

Plaintiff

vs.

ASSOCIATION OF AMERICAN RAILROADS

Transportation Building

Washington 6, D. C.

et al

Defendants

Civil Action No. 4056-54

Filed September 22, 1954

COMPLAINT

1. This case arises under the anti-trust laws of the United States, and more particularly under Sections 1 and 2 of the Act of Congress of July 2, 1890 entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" (c. 647, 26 Stat. 209), as amended, commonly known as the Sherman Act (15 U.S.C. §§1, 2). Jurisdiction is conferred upon this Court by Section 7 of the Sherman Act (26 Stat. 210, 28 Stat. 570), and by Sections 4, 12 and 16 of the Act of October 15 1941 (38 Stat. 731, 736, 737) commonly known as the Clayton Act. (15 U.S.C. §§15, 22 and 26).

2. The plaintiff, Riss & Company, Inc., hereinafter referred to as "Riss", is a corporation organized and existing under the laws of the State of Colorado, with its principal office in Kansas City, Missouri. Riss is a common carrier of property by motor vehicle in interstate or foreign commerce. Riss holds certificates of public convenience and necessity and other operating authority issued by the Interstate Commerce Commission pursuant to the terms of the Interstate Commerce Act, as amended (49 U.S.C. § 301 et seq.),

authorizing the transportation of property between points, over routes, and within territories in twenty-two States and the District of Columbia. Riss is and has been at all times material hereto engaged in such transportation, including transportation of property in interstate or foreign commerce to and from and within the District of Columbia.

3. Defendant Association of American Railroads, hereinafter referred to as "AAR", is an unincorporated association having its principal offices in the Transportation Building, Washington 6, D. C. The membership of AAR includes common carriers by railroad in interstate or foreign commerce. All defendant railroads belong to AAR. AAR operates under the supervision and direction of a Board of Directors, composed of officers and employees of defendant railroads and of other railroads. AAR has a large organization and staff of paid personnel. The functions and operations of AAR are divided into departments and bureaus, each under the direct supervision and control of a vice-president of AAR. One such department is the Public Relations Department. There are, in addition, subdivisions of AAR under the direct control of the Vice President-Assistant to the President of AAR. Included in this group are the Committee on Motor Transportation and a section entitled "Competitive Transportation Research." The expenses of AAR, including the salaries of its officers and employees, are paid through assessments levied upon member railroads in accordance with each member's operating revenue. AAR regularly transacts business in the District of Columbia and a substantial part of the acts of AAR, pursuant to the unlawful agreement, conspiracy, combination and attempt to restrain and monopolize herein alleged were performed in the District of Columbia.

4. Defendant The Association of Western Railways, hereinafter referred to as "Western Railways", is an unincorporated association having its principal offices in the Union Station Building, Chicago, Illinois. The membership of Western Railways includes common carriers by railroad in interstate or foreign commerce in the Western District of the United States, which includes that portion of the United States west of the Mississippi River and Wisconsin and the western part of Illinois. Defendant railroads whose system of operations

extends within the Western District of the United States belong to Western Railways. Western Railways operates under the supervision and direction of a chairman and has a staff of paid personnel. Western Railways is composed of several permanent departments, including a Law Department, a Public Relations Department and a department or subdivision operating under the title "Western Traffic Association." Western Railways pays the staff and maintains an office in the Sheraton Building in the District of Columbia. The expenses of Western Railways, including the salaries of its officers and employees, are paid through assessments levied upon member railroads in accordance with each member's operating revenue. Western Railways regularly transacts business in the District of Columbia and a substantial part of the acts of Western Railways pursuant to the unlawful agreement, conspiracy, combination and attempt to restrain and monopolize herein alleged were performed in the District of Columbia.

5. Defendant Traffic Executive Association - Eastern Railroads, hereinafter referred to as "Eastern Railroads", is an unincorporated association having its principal offices at One Park Avenue, New York 16, New York. The membership of Eastern Railroads includes common carriers by railroad in interstate or foreign commerce in the Eastern District of the United States, which includes that portion of the United States lying generally east of the Mississippi River and north of the Ohio and Potomac Rivers. Defendant railroads whose system of operations extends within the Eastern District of the United States belong to Eastern Railroads. Eastern Railroads operates under the supervision and direction of a Chairman and maintains a staff of paid personnel. Eastern Railroads has various bureaus and committees, including a Motor Carrier Bureau. Eastern Railroads pays the staff and maintains an office in the Bond Building in the District of Columbia. The expenses of Eastern Railroads, including the salaries of its officers and employees, are paid through assessments levied upon member railroads in accordance with each member's track mileage. Eastern Railroads regularly transacts business in the District of Columbia and a substantial part of the acts of Eastern Railroads pursuant to the unlawful agreement, conspiracy, combination and attempt to restrain and monopolize herein alleged were performed in the District of Columbia.

6. Defendant Eastern Railroads Presidents Conference, hereinafter referred to as "Presidents Conference", is an unincorporated association having its principal offices at 143 Liberty Street, New York 9, New York. The membership of Presidents Conference includes, as official representatives, the President or other chief executive officer of the member railroads of defendant Eastern Railroads. Presidents Conference is operated under the supervision and direction of a Chairman and has a staff of paid personnel. Presidents Conference is composed of committees and sub-committees, including an Executive Committee, and a Bureau of Information. The expenses of Presidents Conference, including the salaries of its officers and employees, are paid through assessments levied upon the railroads whose executive officers are members of Presidents Conference, the amount being in accordance with each railroad's trackage. Presidents Conference regularly transacts business in the District of Columbia and its publicity agent, Carl Byoir and Associates, Inc., a defendant herein, maintains an office and staff in the National Press Building in the District of Columbia. A substantial part of the acts of Presidents Conference pursuant to the unlawful agreement, conspiracy, combination and attempt to restrain and monopolize herein alleged were performed by it and through its agent in the District of Columbia.

7. Defendant Carl Byoir and Associates, Inc., hereinafter referred to as "Byoir", is a corporation organized and existing under the laws of the State of New York having its principal offices at 10 East 40th Street, New York, New York. Byoir is engaged in business as a publicity agent. Byoir acts as publicity agent, and has so acted during all times material hereto, for defendant Presidents Conference. Byoir maintains an office in the National Press Building in the District of Columbia. Byoir regularly transacts business in the District of Columbia and a substantial part of the acts of Byoir pursuant to the unlawful agreement, conspiracy, combination and attempt to restrain and monopolize herein alleged were performed in the District of Columbia.

8. The following common carriers by railroad in interstate or foreign commerce in the United States are hereby made defendants; these defendants are

hereinafter referred to collectively as "defendant railroads", each of defendant railroads regularly transacts business in the District of Columbia:

- (A) The Akron, Canton & Youngstown Railroad, a corporation organized and existing under the laws of the State of Ohio, having its principal offices in Akron, Ohio;
- (B) Atlantic Coast Line Railroad Company, a corporation organized and existing under the laws of the State of Virginia, having its principal offices in New York, New York;
- (C) Those railroads known as "Santa Fe Lines", which are:
 - (1) The Atchison, Topeka and Santa Fe Railway Company, a corporation organized and existing under the laws of the State of Kansas, having its principal offices in Chicago, Illinois;
 - (2) Gulf, Colorado & Santa Fe Railway Company, a corporation organized and existing under the laws of the State of Texas, having its principal offices in Galveston, Texas;
 - (3) Panhandle & Santa Fe Railway Company, a corporation organized and existing under the laws of the State of Texas, having its principal offices in Amarillo, Texas;
- (D) Baltimore & Ohio Railroad Co., a corporation organized and existing under the laws of the State of Maryland, having its principal offices in Baltimore, Maryland;
- (E) Boston & Maine Railroad, a corporation organized and existing under the laws of the State of New York, having its principal offices in Boston, Massachusetts;
- (F) Central Railroad Company of New Jersey, a corporation organized and existing under the laws of the State of New Jersey, having its principal offices in Jersey City, New Jersey;
- (G) Central Vermont Railway, Inc., a corporation organized and existing under the laws of the State of Vermont, having its principal offices in St. Albans, Vermont;

- (H) The Chesapeake & Ohio Railway Company, a corporation organized and existing under the laws of the State of Virginia, having its principal offices in Cleveland, Ohio;
- (I) Those railroads known as "The Burlington Lines", which are:
 - (1) Chicago, Burlington & Quincy Railroad Company, a corporation organized and existing under the laws of the State of Illinois, having its principal offices in Chicago, Illinois;
 - (2) The Colorado and Southern Railway Company, a corporation organized and existing under the laws of the State of Colorado, having its principal offices in Denver, Colorado;
 - (3) Fort Worth and Denver Railway Company, a corporation organized and existing under the laws of the State of Texas, having its principal offices in Fort Worth, Texas;
- (J) Chicago Great Western Railway Company, a corporation organized and existing under the laws of the State of Illinois, having its principal offices in Chicago, Illinois;
- (K) Chicago, Indianapolis and Louisville Railway Company, a corporation organized and existing under the laws of the State of Indiana, having its principal offices in Chicago, Illinois;
- (L) Chicago, Milwaukee, St. Paul and Pacific Railroad Company, a corporation organized and existing under the laws of the State of Wisconsin, having its principal offices in Chicago, Illinois;
- (M) Chicago and North Western Railway Company, a corporation organized and existing under the laws of the State of Wisconsin, having its principal offices in Chicago, Illinois;
- (N) Chicago, Rock Island and Pacific Railroad Co., a corporation organized and existing under the laws of the State of Delaware, having its principal offices in Chicago, Illinois;
- (O) The Delaware, Lackawanna & Western Railroad Company, a corporation organized and existing under the laws of the State of Pennsylvania, having its principal offices in New York, New York,

- (P) The Delaware and Hudson Railroad Corporation, a corporation organized and existing under the laws of the State of New York, having its principal offices in New York, New York;
- (Q) The Denver & Rio Grande Western Railroad Company, a corporation organized and existing under the laws of the State of Delaware, having its principal offices in Denver, Colorado;
- (R) Duluth, South Shore and Atlantic Railroad Company (P. L. Solether, Trustee), a corporation organized and existing under the laws of the State of Minnesota, having its principal offices in Minneapolis, Minnesota;
- (S) Elgin, Joliet and Eastern Railway Company, a corporation organized and existing under the laws of the State of Illinois, having its principal offices in Chicago, Illinois;
- (T) Erie Railroad Company, a corporation organized and existing under the laws of the State of New York, having its principal offices in Cleveland, Ohio;
- (U) Grand Trunk Western Railroad Company, a corporation organized and existing under the laws of the States of Michigan and Indiana, having its principal offices in Detroit, Michigan;
- (V) Great Northern Railway Company, a corporation organized and existing under the laws of the State of Minnesota, having its principal offices in St. Paul, Minnesota;
- (W) Gulf, Mobile & Ohio Railroad Company, a corporation organized and existing under the laws of the State of Mississippi, having its principal offices in Mobile, Alabama;
- (X) Illinois Central Railroad Company, a corporation organized and existing under the laws of the State of Illinois, having its principal offices in Chicago, Illinois;
- (Y) Lehigh Valley Railroad Company, a corporation organized and existing under the laws of the State of Pennsylvania, having its principal offices in New York, New York;

- (Z) Louisville & Nashville Railroad Company, a corporation organized and existing under the laws of the State of Kentucky, having its principal offices in Louisville, Kentucky;
- (AA) The following railroads, commonly controlled, which are:
 - (1) Midland Valley Railroad Company, a corporation organized and existing under the laws of the State of Arkansas, having its principal offices in Philadelphia, Pennsylvania;
 - (2) Kansas, Oklahoma & Gulf Railway Co., a corporation organized and existing under the laws of the State of Oklahoma, having its principal offices in Philadelphia, Pennsylvania;
 - (3) Oklahoma City-Ada-Atoka Railway Company, Inc., a corporation organized and existing under the laws of the State of Oklahoma, having its principal offices in Muskogee, Oklahoma;
- (BB) The Minneapolis & St. Louis Railway Company, a corporation organized and existing under the laws of the State of Minnesota, having its principal offices in Minneapolis, Minnesota;
- (CC) Missouri-Kansas-Texas Railroad Company, a corporation organized and existing under the laws of the State of Kansas, having its principal offices in St. Louis, Missouri;
- (DD) Those railroads known as "Missouri Pacific Lines", which are:
 - (1) Missouri Pacific Railroad Company (Guy A. Thompson, Trustee), a corporation organized and existing under the laws of the State of Missouri, having its principal offices in St. Louis, Missouri;
 - (2) New Orleans, Texas & Mexico Railway Company, a corporation organized and existing under the laws of the State of Louisiana, having its principal offices in St. Louis, Missouri;

- (3) The Beaumont, Sour Lake & Western Railway Company, a corporation organized and existing under the laws of the State of Texas, having its principal offices in St. Louis, Missouri;
- (4) The Orange & Northwestern Railroad Company, a corporation organized and existing under the laws of the State of Texas, having its principal offices in St. Louis, - Missouri;
- (5) The St. Louis, Brownsville and Mexico Railway Company, a corporation organized and existing under the laws of the State of Texas, having its principal offices in St. Louis, Missouri;
- (6) New Iberia & Northern Railroad Company, a corporation organized and existing under the laws of the State of Louisiana, having its principal offices in St. Louis, Missouri;
- (7) Houston and Brazos Valley Railway Company, a corporation organized and existing under the the laws of the State of Texas, having its principal offices in St. Louis, Missouri;
- (8) International-Great Northern Railroad Company, a corporation organized and existing under the laws of the State of Texas, having its principal offices in St. Louis, Missouri;
- (9) San Antonio, Uvalde & Gulf Railroad Company, a corporation organized and existing under the laws of the State of Texas, having its principal offices in St. Louis, Missouri;
- (10) Sugar Land Railway Company, a corporation organized and existing under the laws of the State of Texas, having its principal offices in St. Louis, Missouri;
- (11) Rio Grande City Railway Company, a corporation organized and existing under the laws of the State of Texas, having its principal offices in St. Louis, Missouri;
- (12) Asherton and Gulf Railway Company, a corporation organized and existing under the laws of the State of Texas, having its principal offices in St. Louis, Missouri;

- (13) San Antonio Southern Railway Company, a corporation organized and existing under the laws of the State of Texas, having its principal offices in St. Louis, Missouri;
- (14) Asphalt Belt Railway Company, a corporation organized and existing under the laws of the State of Texas, having its principal offices in St. Louis, Missouri;
- (15) Iberia, St. Mary and Eastern Railroad Company, a corporation organized and existing under the laws of the State of Louisiana, having its principal offices in St. Louis, Missouri;
- (16) San Benito and Rio Grande Valley Railway Company, a corporation organized and existing under the laws of the State of Texas, having its principal offices in St. Louis, Missouri;
- (17) Houston North Shore Railway Company, a corporation organized and existing under the laws of the State of Texas, having its principal offices in St. Louis, Missouri;
- (EE) Those railroads known as "New York Central System", which are:
 - (1) The New York Central Railroad Company, a corporation organized and existing under the laws of the States of New York, Ohio, Illinois, Indiana, Pennsylvania and Michigan, having its principal offices in New York, New York;
 - (2) The Pittsburgh & Lake Erie Railroad Company, a corporation organized and existing under the laws of the State of Pennsylvania, having its principal offices in New York, New York;
 - (3) Chicago River & Indiana Railroad Company, a corporation organized and existing under the laws of the State of Illinois, having its principal offices in New York, New York;
 - (4) Indiana Harbor Belt Railroad Company, a corporation organized and existing under the laws of the State of Indiana, having its principal offices in New York, New York;

- (FF) The New York, Chicago and St. Louis Railroad Company, a corporation organized and existing under the laws of the States of Ohio, New York, Pennsylvania, Indiana and Illinois, having its principal offices in Cleveland, Ohio;
- (GG) The New York, New Haven and Hartford Railroad Company, a corporation organized and existing under the laws of the States of Connecticut, Massachusetts and Rhode Island, having its principal offices in New Haven, Connecticut;
- (HH) Norfolk and Western Railway Company, a corporation organized and existing under the laws of the State of Virginia, having its principal offices in Roanoke, Virginia;
- (II) Northern Pacific Railway Company, a corporation organized and existing under the laws of the State of Wisconsin, having its principal offices in St. Paul, Minnesota;
- (JJ) The Pennsylvania Railroad Company, a corporation organized and existing under the laws of the State of Pennsylvania, having its principal offices in Philadelphia, Pennsylvania;
- (KK) The Pittsburgh & West Virginia Railway Company, a corporation organized and existing under the laws of the State of Pennsylvania, having its principal offices in Pittsburgh, Pennsylvania;
- (LL) Reading Company, a corporation organized and existing under the laws of the State of Pennsylvania, having its principal offices in Philadelphia, Pennsylvania;
- (MM) Rutland Railway Corporation, a corporation organized and existing under the laws of the States of Vermont and New York, having its principal offices in Rutland, Vermont;
- (NN) St. Louis-San Francisco Railway Company, a corporation organized and existing under the laws of the State of Missouri, having its principal offices in St. Louis, Missouri;

- (OO) St. Louis Southwestern Railway Lines, a corporation organized and existing under the laws of the State of Missouri, having its principal offices in St. Louis, Missouri;
- (PP) Those railroads known as "Southern Pacific Lines", which are:
 - (1) Southern Pacific Company, a corporation organized and existing under the laws of the State of Delaware, having its principal offices in San Francisco, California;
 - (2) Texas and New Orleans Railroad, a corporation organized and existing under the laws of the State of Texas, having its principal offices in Houston, Texas;
- (QQ) The Texas and Pacific Railway Company, a corporation organized and existing by Acts of Congress, having its principal offices in Dallas, Texas;
- (RR) Toledo, Peoria and Western Railroad, a corporation organized and existing under the laws of the State of Delaware, having its principal offices in Peoria, Illinois;
- (SS) Union Pacific Railroad Company, a corporation organized and existing under the laws of the State of Utah, having its principal offices in New York, New York;
- (TT) The Virginian Railway Company, a corporation organized and existing under the laws of the State of Virginia, having its principal offices in Norfolk, Virginia;
- (UU) Wabash Railroad Company, a corporation organized and existing under the laws of the State of Ohio, having its principal offices in St. Louis, Missouri;
- (VV) The Western Pacific Railroad Company, a corporation organized and existing under the laws of the State of California, having its principal offices in San Francisco, California;
- (WW) Minneapolis, St. Paul & Sault Ste. Marie Railroad Company, a corporation organized and existing under the laws of the State of Minnesota, having its principal offices in Minneapolis, Minnesota;

(XX) Those railroads known as "Southern Railway System", which are:

- (1) Southern Railway Company, a corporation organized and existing under the laws of the State of Virginia, having its principal offices in the District of Columbia;
- (2) The Cincinnati, New Orleans & Texas Pacific Railway Co., a corporation organized and existing under the laws of the State of Ohio, having its principal offices in Cincinnati, Ohio;
- (3) Georgia Southern & Florida Railway Company, a corporation organized and existing under the laws of the State of Georgia, having its principal offices in Macon, Georgia;
- (4) The Alabama Great Southern Railroad Company, a corporation organized and existing under the laws of the State of Alabama, having its principal offices in Birmingham, Alabama;
- (5) New Orleans & Northeastern Railroad Company, a corporation organized and existing under the laws of the State of Louisiana, having its principal offices in New Orleans, Louisiana;
- (6) Carolina and Northwestern Railway Company, a corporation organized and existing under the laws of the States of North Carolina and South Carolina, having its principal offices in Cincinnati, Ohio;

(YY) Chicago & Eastern Illinois Railroad Company, a corporation organized and existing under the laws of the State of Indiana, having its principal offices in Chicago, Illinois;

(ZZ) Seaboard Air Line Railroad Company, a corporation organized and existing under the laws of the State of Virginia, having its principal offices in Norfolk, Virginia;

- (AAA) Litchfield and Madison Railway Company, a corporation organized and existing under the laws of the State of Illinois, having its principal offices in Chicago, Illinois; and
- (BBB) Quanah Acme & Pacific Railway Company, a corporation organized and existing under the laws of the State of Texas, having its principal offices in Quanah, Texas.

10. AAR, Western Railways, Presidents Conference and Eastern Railroads are trade associations representing railroad interests in that part of the United States in which Riss operates. Byoir is, and has been at all times material hereto, publicity agent of Presidents Conference. Defendant railroads are the largest and most powerful railroads in the United States. Defendant railroads among themselves and through their trade associations and Byoir have sought over a period of years by any and every means to eliminate and restrain motor carrier competition and to secure for the railroads a monopoly of land transportation within the United States.

11. Transportation of property in interstate or foreign commerce is essential to the production, distribution and consumption of goods and services and to the maintenance of adequate means of national defense. The cost of goods and services produced within the United States is directly affected by transportation charges and the efficiency with which transportation service is performed. Industry prospers or declines depending upon the availability and cost of transportation service. Unreasonable restraints and restrictions upon the types of transportation available to producers, distributors or consumers of goods or the existence of a monopoly in transportation service directly affect the kind, quality and price of products and services offered to the public. Artificial restraints and restrictions upon transportation materially increase the cost of national defense and hamper the preparation and maintenance of adequate means of national defense. The development of the motor carrier industry during the last twenty years, with the speed and flexibility of service offered by motor carriers, has made available a more efficient and economical means of transportation than that offered by railroads. The existence of competition through the development of

motor carriers has resulted in the creation of a national transportation system adequate to the needs of commerce and of the national defense.

12. Riss was organized in 1927 and has since that time engaged in transportation as a common carrier by motor vehicle of property in interstate or foreign commerce. Riss holds certificates of public convenience and necessity and other operating authority issued by the Interstate Commerce Commission authorizing service between points, over routes and within territory in the States of Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Maryland, Delaware, Virginia, West Virginia, Ohio, Kentucky, Indiana, Illinois, Michigan, Iowa, Nebraska, Kansas, Colorado, Missouri, Oklahoma, Texas and the District of Columbia. Riss maintains terminal facilities for handling freight in twenty-six cities in this territory and maintains five sales and executive offices, including one in the District of Columbia. In addition to transportation service between points Riss is authorized to serve, Riss also provides service over its routes, in conjunction with other motor carriers, on property moving in interstate or foreign commerce to or from numerous other points within the United States. Riss operates in excess of 800 truck units and has over 2,000 employees. During the years from 1950 to 1953 inclusive Riss has been one of the five largest interstate motor carriers in the United States in terms of gross revenues. Riss is and has been for several years one of the largest motor carriers of military supplies, including ammunition and explosives, for the Armed Forces. In the period 1950 through 1953 Riss' gross operating revenues, intercity miles operated and tonnage transported in interstate and foreign commerce were as follows:

<u>Year</u>	<u>Gross Revenue (Dollars)</u>	<u>Intercity Miles Operated</u>	<u>Tons of Revenue Freight Carried In Intercity Service</u>
1950	\$18,257,276	42,425,399 miles	658,200 Tons
1951	21,503,950	48,432,305 miles	748,302 Tons
1952	26,788,120	61,507,794 miles	841,785 Tons
1953	29,114,678	63,903,619 miles	846,691 Tons

13. Beginning in or about the year 1950, the exact date being to Riss unknown, and continuing thereafter up to and including the date of the filing of this complaint, defendant railroads among themselves; AAR, Western Railways, Presidents Conference, Eastern Railroads, and Byoir among themselves; and defendant railroads with AAR, Western Railways, Presidents Conference, Eastern Railroads and Byoir, together with other persons to Riss unknown, have agreed, combined and conspired in unreasonable restraint of trade and commerce in the transportation of property in interstate and foreign commerce and have conspired, combined and attempted to monopolize the transportation of property in interstate and foreign commerce. The object of the agreement, conspiracy, combination and attempt has been to restrict, restrain, impede, harass and eliminate the competition of Riss in the transportation of property in interstate and foreign commerce in violation of Sections 1 and 2 of the Sherman Act.

14. As a part and for the purpose of effectuating the unlawful agreement, combination and conspiracy to restrain the competition of Riss and to monopolize the land transportation of property by the elimination of Riss, defendant railroads, AAR, Western Railways, Presidents Conference, Eastern Railroads, and Byoir have engaged and are engaging in the following types of activity and other types of activities to Riss unknown:

- (A) The solicitation, directly and indirectly through front organizations, of elected and appointed officials of States to institute action to bring about a revocation and cancellation of the interstate operating authority held by Riss. As an example of this type of activity, during 1952 an employee of Byoir, acting upon instructions of an employee of The Pennsylvania Railroad Company and agent of Presidents Conference, contacted officials of the Public Utilities Commission of the State of Ohio and sought to have the Public Utilities Commission of Ohio institute proceedings before the Interstate Commerce Commission to cancel operating authority held by Riss.

- (B) The solicitation, directly and indirectly through front organizations, of elected and appointed officials of States, cities, towns, counties and other political subdivisions of States in which Riss holds interstate operating authority to impose statutes, ordinances and regulations which would eliminate, hamper, restrict and impede motor carrier operations by Riss and which were designed to render motor carrier operations impractical and economically unfeasible. As examples of these types of activities, defendants sought to have adopted statutes, ordinances and regulations limiting the weight of certain commodities to be transported in one truck to a maximum of 5,000 pounds and limiting or prohibiting the use of necessary routes, bridges and tunnels by Riss.
- (C) The solicitation and advising, directly and indirectly through front organizations, of elected and appointed officials of States, cities, towns, counties and other political subdivisions of States in which Riss holds interstate operating authority to institute special campaigns designed to harass, burden and impede interstate transportation by Riss through the unusual enforcement of statutes, ordinances and regulations against Riss. As an example, during 1952 an employee of Byoir solicited and advised the Public Utilities Commission of Ohio to assign special investigators to follow the vehicles operated by Riss hundreds of miles for the purpose of finding any possible violations.
- (D) Abuse of the privilege of intervention and participation in proceedings before the Interstate Commerce Commission controlling the legal right and authority of Riss to engage in the transportation of property as a common carrier by motor vehicle. As an example of this activity, beginning

in 1951, defendants participated and solicited the participation by citizens groups, automobile clubs, chambers of commerce, parent-teacher associations and other miscellaneous organizations and persons in a proceeding still pending before the Interstate Commerce Commission in which Riss is the applicant for operating authority. As a result of this activity, the proceeding before the Interstate Commerce Commission consumed fifty days of hearings, the transcript is 7,319 pages long and 340 exhibits comprising thousands of pages were identified. Defendants used the proceeding before the Interstate Commerce Commission as a vehicle for conducting a scurrilous, vicious and false campaign of publicity and propaganda against Riss. Defendants obtained and sought to obtain the participation in the proceedings of independent public authorities, citizens groups, chambers of commerce, parent-teacher organizations and others through the circulation of viciously false, misleading and incomplete statements and propaganda directly through agents and employees of defendants and by others whose intimate association with defendants was not revealed.

- (E) Institution of a campaign of unfair competitive practices against Riss through the preparation, circulation and publication of false and malicious statements concerning Riss, the operations conducted by Riss and the character and conduct of its officers. As an example of this activity Southern Railway Company caused to be published and circulated in its magazine entitled "TIES" in November, 1951 an article relating the operations conducted by Riss to the release of a mad dog on the main streets of towns and cities. This

article also solicited all readers to urge elected officials, chambers of commerce, trade associations, civic groups and parent-teacher groups to take formal action in opposition to the operations of Riss.

15. Defendants have conducted their activities in furtherance of their unlawful objectives directly through their own employees, agents and others whose association and relationship to defendants is generally known. These activities have also been carried on through front organizations, employees and agents whose relationship to the railroad industry was unknown to the public. The defendants have also sought to infiltrate and utilize a number of independent public organizations such as the Illinois Parent Teachers Association and Congress of Parents and Teachers of Oklahoma in achieving their unlawful objectives. A substantial portion of defendants' activities in furtherance of their unlawful objectives took place within the District of Columbia.

16. The unlawful agreement, combination, conspiracy and attempt to restrain and monopolize of defendants has been entered upon and carried out primarily through such instrumentalities as the so-called "Competitive Transportation Research", "Motor Carrier Bureau", and "Committee on Motor Transportation" of defendants. In addition, committees have been formed by defendant railroad associations and among defendant railroads of less permanent duration and organization but which were specially engaged in furthering the unlawful activities of defendants. Defendants have expended enormous sums of money, which plaintiff estimates at not less than \$1,000,000, in pursuance of and in implementing their objectives of restraining and eliminating the competition of Riss.

17. The unlawful agreement, combination and conspiracy to restrain the competition of Riss and attempt to monopolize land transportation by the elimination of Riss, has resulted, as contemplated and intended by defendants, in substantial impairment of the operations of Riss, in the loss of profits by Riss in the transportation of property as authorized by its operating authority, in damage to the good name and reputation of Riss within the transportation industry and among shippers and receivers of freight and has compelled Riss to expend its

resources, energies and money in combatting defendants' unlawful interference with its business; all in the amount of \$30,000,000 to the date of filing of this complaint. The unlawful agreement, combination and conspiracy to restrain and attempt to monopolize of defendants has been pursued to the present time and will continue unless restrained by this Court.

WHEREFORE, Plaintiff demands:

1. Injunctive relief permanently enjoining and restraining AAR, Western Railways, Presidents Conference and Eastern Railroads, and each of them, from creating or continuing any committees, subcommittees, bureaus, departments, sections, divisions, subdivisions, or other association activity the principal purpose of which is to restrain, impede, impair, hamper, harass or eliminate the competition of plaintiff and of other motor carriers;
3. Injunctive relief permanently enjoining, restraining and prohibiting defendants and each of them and their officers, directors, agents, servants and employees from agreeing, conspiring or combining to restrain the competition of plaintiff and from conspiring, combining and attempting to monopolize land transportation by the elimination of plaintiff and from performing any acts in furtherance of such unlawful objects and purpose;
3. Judgment against defendants and each of them for \$90,000,000, being the amount equal to three times the damages sustained by plaintiff;
4. Judgment against defendants and each of them for the amount of reasonable attorneys' fees and costs of this action; and
5. Such other and further relief as to the Court may appear just and proper.

/s/ A. Alvis Layne, Jr.

/s/ H. Charles Ephraim
Attorneys for Plaintiff
Pennsylvania Building
Washington 4, D. C.

(HEADING OMITTED)

Civil Action No. 4056-54 Filed October 18, 1954

SEPARATE ANSWER OF CARL BYOIR & ASSOCIATES, INC.

CARL BYOIR & ASSOCIATES, INC., one of the defendants, answers the complaint herein as follows:

1. This defendant denies that the allegations contained in the complaint are such allegations as would entitle the plaintiff to bring this action under the anti-trust laws of the United States and this defendant denies that the Court has jurisdiction of this action under Section 7 of the Act commonly known as the Sherman Act or under Sections 4, 12 or 16 of the Act commonly known as the Clayton Act.
2. This defendant is without knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph 2 of the complaint.
3. This defendant is without knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph 3 of the complaint except that this defendant denies that it entered into or participated in any unlawful agreement, conspiracy, combination or attempt to restrain or monopolize purportedly described in the complaint.
4. This defendant is without knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph 4 of the complaint except that this defendant denies that it entered into or participated in any unlawful agreement, conspiracy, combination or attempt to restrain or monopolize purportedly described in the complaint.
5. This defendant is without knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph 5 of the complaint except that this defendant denies that it entered into or participated in any unlawful agreement, conspiracy, combination or attempt to restrain or monopolize purportedly described in the complaint.

6. This defendant is without knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in the first, second, third, fourth and fifth sentences of paragraph 6 of the complaint except that this defendant admits that Eastern Railroads Presidents Conference has an office at 143 Liberty Street, New York 9, New York. This defendant denies each and every other allegation contained in paragraph 6 of the complaint except that this defendant admits that it maintains an office and staff in the National Press Building in the District of Columbia and this defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation that Eastern Railroads Presidents Conference regularly transacts business in the District of Columbia.

7. This defendant denies each and every allegation contained in paragraph 6 of the complaint except that this defendant admits: that it is a corporation organized and existing under the laws of the State of New York; that it has its principal offices at 10 East 40th Street, New York, New York; that it maintains an office in the National Press Building in the District of Columbia; and that it regularly transacts business in the District of Columbia.

8. This defendant is without knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph 8 of the complaint.

9. The complaint served upon this defendant contained no paragraph 9 and therefore no answer is necessary or possible.

10. This defendant denies each and every allegation contained in paragraph 10 of the complaint except that this defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations: that Association of American Railroads, The Association of Western Railways, Eastern Railroads Presidents Conference and Traffic Executive Association - Eastern Railroads are trade associations representing railroad interests in that part of the United States in which Riss & Company operates; that defendant railroads are the largest and most powerful railroads in the United States; or relating to what defendant railroads have sought to do among themselves or through their trade associations.

11. This defendant is without knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph 11 of the complaint except that this defendant: admits that the transportation of certain property in interstate or foreign commerce is important to the production, distribution and consumption of certain goods and services and to the national defense; admits that the cost of certain goods and services produced within the United States is affected by transportation charges; and denies that the development of the motor carrier industry has made available a more efficient or economical means of transportation than that offered by railroads.

12. This defendant is without knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph 12 of the complaint.

13. This defendant denies each and every allegation contained in paragraph 13 of the complaint except that this defendant is without knowledge or information sufficient to form a belief as to the truth of any of the allegations relating to what defendant railroads have done among themselves.

14. This defendant denies each and every allegation contained in paragraph 14 of the complaint.

15. This defendant denies each and every allegation contained in paragraph 15 of the complaint.

16. This defendant denies each and every allegation contained in paragraph 16 of the complaint.

17. This defendant denies each and every allegation contained in paragraph 17 of the complaint.

WHEREFORE, this defendant, CARL BYOIR & ASSOCIATES, INC., prays that the complaint be dismissed and that this defendant be awarded its costs and disbursements of this action and such other and further relief as to the Court may seem just and proper in the premises.

HUDSON, CREYKE, LIPSCOMB & GRAY
400 Washington Building
Washington 5, D. C.
MEtropolitan 8-6200
By /s/ Robert M. Gray

HUGHES, HUBBARD, BLAIR & REED

One Wall Street

New York 5, N. Y.

WHitehall 3-6500

By /s/ Richard W. Hogue, Jr.

Attorneys for Defendant

CARL BYOIR & ASSOCIATES, INC.

(CERTIFICATE OF SERVICE OMITTED)

(HEADING OMITTED) Civil Action No. 4056-54 Filed October 18, 1954

ANSWER OF THE DEFENDANT THE PENNSYLVANIA RAILROAD
COMPANY

First Defense

The Pennsylvania Railroad Company (hereinafter referred to as this defendant), by its attorneys answers the complaint herein as follows (the succeeding paragraphs being numbered to correspond to the numbering of the complaint):

1. This defendant denies each and every allegation of Paragraph 1 except that it admits that the plaintiff seeks to invoke the jurisdiction of this Court under Section 7 of the Sherman Act and Sections 4, 12 and 16 of the Clayton Act.

2. This defendant admits that Riss & Company, Inc. is a common carrier of property by motor vehicle in interstate commerce, and that Riss & Company, Inc. holds certain certificates of public convenience and necessity and other operating authority issued by the Interstate Commerce Commission, but has no knowledge or information sufficient to form a belief as to the truth of the other allegations of Paragraph 2.

3. This defendant admits the allegations contained in the first, second, fifth, sixth, seventh, eighth, ninth and tenth sentences of Paragraph 3, except that it denies (a) that the Committee on Motor Transportation is at the present time under the direct control of the Vice President - Assistant to the President of the Association of American Railroads, and (b) that an assessment

is levied upon each member of the Association of American Railroads in accordance with that member's operating revenue. This defendant denies the allegations of the third, fourth and last sentences of Paragraph 3, except it admits that general supervision and control of the affairs of the Association of American Railroads is vested in a Board of Directors who are elected annually by the member railroads, and it admits that the Association of American Railroads regularly transacts business in the District of Columbia.

4. This defendant admits the allegations contained in the first two sentences of Paragraph 4, but has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in the third, fourth, fifth, sixth and seventh sentences of Paragraph 4. This defendant denies each and every allegation contained in the last sentence of Paragraph 4, except that it states that it has no knowledge or information sufficient to form a belief as to the truth of the allegation that the Association of Western Railways regularly transacts business in the District of Columbia.

5. This defendant admits the allegations contained in the first, fifth and sixth sentences of Paragraph 5. This defendant denies each and every allegation contained in the second, third and fourth sentences of Paragraph 5, except that it admits (a) the membership of Traffic Executive Association - Eastern Railroads includes common carriers by railroad in interstate or foreign commerce, and (b) Eastern Railroads has a chairman and maintains a staff of paid personnel. This defendant denies each and every allegation contained in the seventh and eighth sentences of Paragraph 5, except that it has no knowledge or information sufficient to form a belief as to the truth of the allegation that Eastern Railroads regularly transacts business in the District of Columbia.

6. This defendant admits the allegations contained in the first sentence of Paragraph 6. This defendant denies the remaining allegations contained in Paragraph 6, except that it admits that Presidents Conference has a chairman and staff of paid personnel, that Presidents Conference is composed of committees and subcommittees including an Executive Committee, that the expenses of Presidents Conference including the salaries of its officers and employees are

paid through assessments levied upon the railroads whose executive officers are members of Presidents Conference, and that Carl Byoir and Associates, Inc., a defendant herein, maintains an office and staff in the National Press Building in the District of Columbia.

7. This defendant admits the allegations contained in the first and fourth sentences of Paragraph 7, states it has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in the second sentence of Paragraph 7 and has no knowledge or information sufficient to form a belief as to the truth of so much of the last sentence of Paragraph 7 as alleges that Byoir regularly transacts business in the District of Columbia. This defendant denies each and every remaining allegation of Paragraph 7.

8. This defendant admits that each of the corporations named in Paragraph 8 is a common carrier by railroad and is named as a defendant in this action and that such defendants are referred to collectively in the complaint as "defendant railroads". This defendant admits that it regularly transacts business in the District of Columbia. This defendant has no knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 8 except that it admits the allegations contained in subparagraph (JJ).

9. This defendant avers that the complaint contains no Paragraph 9.

10. This defendant denies the allegations contained in Paragraph 10, except that it admits that Association of American Railroads, The Association of Western Railways, Eastern Railroads Presidents Conference and Traffic Executive Association - Eastern Railroads are associations representing railroad interests, and it further admits that the eighty-five railroads named as defendants include the largest railroads in the United States.

11. This defendant admits the allegations contained in the first two sentences of Paragraph 11 and states that because of the vagueness and generality of the remaining allegations of said paragraph it has no knowledge or information sufficient to form a belief as to the truth of those allegations except that it denies the allegations contained in the last two sentences of Paragraph 11.

12. This defendant has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 12, except that it admits that Riss & Company, Inc. is a carrier by motor vehicle of property in interstate commerce, and that it holds certain certificates of public convenience and necessity and other operating authority issued by the Interstate Commerce Commission.

13. This defendant denies the allegations contained in Paragraph 13.

14. This defendant denies the allegations contained in Paragraph 14.

15. This defendant denies the allegations contained in Paragraph 15.

16. This defendant denies the allegations contained in Paragraph 16.

17. This defendant denies the allegations contained in Paragraph 17.

Second Defense

18. The complaint fails to state a claim against this defendant upon which relief can be granted.

Third Defense

19. The claim stated in the complaint for damages alleged to have been suffered by the plaintiff covers a period in excess of the period of limitation provided for by Title 12, Section 201 of the District of Columbia Code (1951 Ed.), and to that extent is barred by the provisions of that statute.

Fourth Defense

20. The complaint seeks to recover damages alleged to have been suffered by the plaintiff as an immediate or ultimate consequence of actions which in whole or in part fall within the exclusive or primary jurisdiction of the Interstate Commerce Commission and hence are not cognizable by this Court in a suit brought under the antitrust laws.

21. The complaint seeks injunctive relief under the antitrust laws against common carriers subject to the provisions of the act to regulate commerce, in respect of matters subject to the regulation, supervision or jurisdiction of the Interstate Commerce Commission. Under the provisions of Section 16 of the Clayton Act (15 USC § 26) the plaintiff is not entitled to such relief.

Fifth Defense

22. The complaint seeks to base a cause of action upon alleged activities which consist in whole or in part of the participation in proceedings before the Interstate Commerce Commission or regulatory agencies of the several states, the exercise of the right to petition regulatory agencies, legislative bodies or elected and appointed officials of the Federal Government, the several states, or political subdivisions of states, and of other activities which are a legitimate exercise of rights conferred by the constitutions and laws of the several states and by the Constitution and laws of the United States. Such activities do not fall within the scope of the antitrust laws.

23. Every common carrier by motor vehicle, including the plaintiff, is obligated by law to comply with all applicable statutes, ordinances and regulations duly enacted or adopted by proper governmental authority. Such laws are enforced against common carriers by truck to protect the public interest, health and safety. The plaintiff has no ground for complaint when any such law is enforced against it. A common carrier by truck who complies with weight, speed, safety, hours of service, and traffic laws and other applicable regulations operates at a disadvantage in competition with carriers by truck who persistently violate such laws and regulations. Extensive violations by common carriers by truck force other motor carriers into similar practices, and result in chaotic competitive conditions between all modes of transportation, including the railroads. The administration of Federal and state laws regulating common carriers requires that the carriers themselves initiate enforcement proceedings. For example, the Motor Carrier Act contemplates that it will be enforced to a large degree by adversary proceedings instituted by competing carriers. Congress has always severely limited the personnel of the Interstate Commerce Commission available for direct enforcement of the statutes and regulations applicable to motor carriers. In order for the Motor Carrier Act to be effective in carrying out its purpose of promoting fair competition in common carrier transportation, it is essential for common carriers to cause enforcement of the provisions and regulations of the Motor Carrier Act by the various procedures available to them.

24. This defendant has participated in proceedings still pending before the Interstate Commerce Commission in which the plaintiff and approximately 60 other motor carriers applied for permanent authority to transport dangerous explosives over the public highways of 47 states. Plaintiff sought permanent authority to truck dangerous explosives in an area extending from Denver, Colorado, on the West to Boston, Massachusetts, on the East, and from Detroit, Michigan, on the North to Charlestown, West Virginia, on the South. The Motor Carrier Act requires that before the Commission issues a certificate it must find that the applicant is fit, willing and able properly to comply with the law and regulations and to perform the service proposed. The Commission must also find that the proposed service is or will be required by the present or future public convenience or necessity. These statutory requirements raise numerous issues of law and fact which must be decided in proceedings before the Interstate Commerce Commission. The decision of those issues determines the existence and extent of a carrier's authority to engage in interstate transportation. In such proceedings no attorney of the Interstate Commerce Commission represents the public to insure that the statutory requirements are met. The Motor Carrier Act contemplates that the railroad and motor carrier competitors of an applicant for a certificate of convenience and necessity will appear in the proceedings before the Commission and present evidence and arguments that will aid the Commission in deciding whether the applicant is qualified and whether the proposed service is or will be required by the public convenience and necessity. So that all competitors of an applicant may have notice of the application the Interstate Commerce Commission requires that all applications be published in the Federal Register. Participation by this defendant in proceedings before the Interstate Commerce Commission relating to plaintiff's authority to operate as an interstate motor carrier has been in full accordance with the provisions and purposes of the Motor Carrier Act and the rules and practice of the Commission. Numerous governmental bodies and other public organizations also intervened or participated in such proceedings. Each of these bodies and organizations did so as a result of its independent

decision that its action was desirable to protect the public interest or the interest of that portion of the public that the particular organization represented. The Interstate Commerce Commission has full power and right to control intervention and participation in the proceedings before it. Each organization that participated in proceedings before the Commission did so in accordance with the rules of the Commission and had a lawful right to do so.

/s/ HUGH B. COX
JAMES H. McGLOTHLIN

Attorneys for Defendant
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Covington & Burling
701 Union Trust Building
Washington 5, D. C.

Of Counsel

(CERTIFICATE OF SERVICE OMITTED)

(HEADING OMITTED) Civil Action No. 4-56-54 Filed November 8, 1954

**AMENDED ANSWER OF THE DEFENDANT THE PENNSYLVANIA
RAILROAD COMPANY**

First Defense

The Pennsylvania Railroad Company (hereinafter referred to as this defendant), by its attorneys answers the complaint herein as follows (the succeeding paragraphs being numbered to correspond to the numbering of the complaint):

1. This defendant denies each and every allegation of Paragraph 1 except that it admits that the plaintiff seeks to invoke the jurisdiction of this Court under Section 7 of the Sherman Act and Sections 4, 12 and 16 of the Clayton Act.

2. This defendant admits that the plaintiff is a corporation organized and existing under the laws of the State of Colorado, that the plaintiff is a common carrier of property by motor vehicle in interstate commerce, and that the plaintiff holds certain certificates of public convenience and necessity and other operating authority issued by the Interstate Commerce Commission, but has no knowledge or information sufficient to form a belief as to the truth of the other allegations of Paragraph 2.

3. This defendant admits the allegations contained in the first, second, fifth, sixth, seventh, eighth, ninth and tenth sentences of Paragraph 3, except that it denies (a) that the Committee on Motor Transportation is at the present time under the direct control of the Vice President - Assistant to the President of the Association of American Railroads, and (b) that an assessment is levied upon each member of the Association of American Railroads in accordance with that member's operating revenue. This defendant denies the allegations of the third, fourth and last sentences of Paragraph 3, except that it admits that general supervision and control of the affairs of the Association of American Railroads is vested in a Board of Directors who are elected annually by the member railroads, and it admits that the Association of American Railroads regularly transact business in the District of Columbia.

4. This defendant admits the allegations contained in the first two sentences of Paragraph 4, but has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in the third, fourth, fifth, sixth and seventh sentences of Paragraph 4. This defendant denies each and every allegation contained in the last sentence of Paragraph 4, except that it states that it has no knowledge or information sufficient to form a belief as to the truth of the allegation that the Association of Western Railways regularly transacts business in the District of Columbia.

5. This defendant admits the allegations contained in the first, fifth and sixth sentences of Paragraph 5. This defendant denies each and every allegation contained in the second, third and fourth sentences of Paragraph 5, except that it admits (a) the membership of Traffic Executive Association -

Eastern Railroads includes common carriers by railroad in interstate or foreign commerce, and (b) Eastern Railroads has a chairman and maintains a staff of paid personnel. This defendant denies each and every allegation contained in the seventh and eighth sentences of Paragraph 5, except that it has no knowledge or information sufficient to form a belief as to the truth of the allegation that Eastern Railroads regularly transacts business in the District of Columbia.

6. This defendant admits the allegations contained in the first sentence of Paragraph 6. This defendant denies the remaining allegations contained in Paragraph 6, except that it admits that Presidents Conference has a chairman and staff of paid personnel, that Presidents Conference is composed of committees and subcommittees including an Executive Committee, that the expenses of Presidents Conference including the salaries of its officers and employees are paid through assessments levied upon the railroads-whose executive officers are members of Presidents Conference, and that Carl Byoir and Associates, Inc., a defendant herein, maintains an office and staff in the National Press Building in the District of Columbia.

7. This defendant admits the allegations contained in the first and fourth sentences of Paragraph 7, states it has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in the second sentence of Paragraph 7 and has no knowledge or information sufficient to form a belief as to the truth of so much of the last sentence of Paragraph 7 as alleges that Byoir regularly transacts business in the District of Columbia. This defendant denies each and every remaining allegation of Paragraph 7.

8. This defendant admits that each of the corporations named in Paragraph 8 is a common carrier by railroad and is named as a defendant in this action and that such defendants are referred to collectively in the complaint as "defendant railroads". This defendant admits that it regularly transacts business in the District of Columbia. This defendant has no knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 8 except that it admits the allegations contained in subparagraph (JJ).

9. This defendant avers that the complaint contains no Paragraph 9.

10. This defendant denies the allegations contained in Paragraph 10, except that it admits that Association of American Railroads, The Association of Western Railways, Eastern Railroads Presidents Conference and Traffic Executive Association - Eastern Railroads are associations representing railroad interests, and it further admits that the eighty-five railroads named as defendants include the largest railroads in the United States.

11. This defendant admits the allegations contained in the first two sentences of Paragraph 11 and states that because of the vagueness and generality of the remaining allegations of said paragraph it has no knowledge or information sufficient to form a belief as to the truth of those allegations except that it denies the allegations contained in the last two sentences of Paragraph 11.

12. This defendant has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 12, except that it admits that the plaintiff is a carrier by motor vehicle of property in interstate commerce, and that the plaintiff holds certain certificates of public convenience and necessity and other operating authority issued by the Interstate Commerce Commission.

13. This defendant denies the allegations contained in Paragraph 13.

14. This defendant denies the allegations contained in Paragraph 14.

15. This defendant denies the allegations contained in Paragraph 15.

16. This defendant denies the allegations contained in Paragraph 16.

17. This defendant denies the allegations contained in Paragraph 17.

Second Defense

18. The complaint fails to state a claim against this defendant upon which relief can be granted.

Third Defense

19. The claim stated in the complaint for damages alleged to have been suffered by the plaintiff covers a period in excess of the period of limitation provided for by Title 12, Section 201 of the District of Columbia Code (1951 Ed.), and to that extent is barred by the provisions of that statute.

Fourth Defense

20. The complaint seeks to recover damages alleged to have been suffered by the plaintiff as an immediate or ultimate consequence of actions which in whole or in part fall within the exclusive or primary jurisdiction of the Interstate Commerce Commission and hence are not cognizable by this Court in a suit brought under the antitrust laws.

Fifth Defense

21. The complaint seeks injunctive relief under the antitrust laws against common carriers subject to the provisions of the Act to Regulate Commerce, in respect of matters subject to the regulation, supervision or jurisdiction of the Interstate Commerce Commission. Under the provisions of Section 16 of the Clayton Act (15 USC § 26) the plaintiff is not entitled to such relief.

Sixth Defense

22. The complaint seeks to base a cause of action upon allegations of matters of fact which are not cognizable by this Court until after prior determination by the Interstate Commerce Commission. Such matters have not yet been determined or decided by the Interstate Commerce Commission.

23. The matters of fact alleged in the complaint which are not cognizable by this Court until they have been determined or decided by the Interstate Commerce Commission are inseparable from and essential to the full determination of other matters of fact and conclusions of fact alleged in the complaint.

Seventh Defense

24. Plaintiff seeks injunctive relief and to recover damages with respect to alleged impairment, restriction and impeding of, and alleged injury to, transportation operations which were, during the period of time referred to in the complaint, conducted by the plaintiff in violation of provisions of the Interstate Commerce Act and regulations promulgated thereunder and in violation of state laws and regulations.

Eighth Defense

25. The complaint seeks to review interim and procedural decisions of the Interstate Commerce Commission in proceedings still pending before it, and to provide for collateral review of final decisions in such proceedings, if such final decisions are made by the Commission during the pendency of this action.

Ninth Defense

26. The complaint is based in part upon allegations that this defendant solicited federal and state officers and governments to enact or enforce legislation and regulations affecting the plaintiff, that this defendant participated in administrative proceedings affecting the plaintiff and that this defendant published statements relating to the plaintiff. The complaint seeks to enjoin the alleged activities. Such allegations do not constitute a cause of action under the anti-trust laws, since such laws would be unconstitutional if construed to forbid the exercise of this defendant's constitutional rights of free speech and of assembly and petition, and would be further unconstitutional if construed to authorize injunctions limiting or prohibiting the exercise of such rights by this defendant.

Tenth Defense

27. The complaint seeks to base a cause of action upon alleged activities which consist in whole or in part of participation in proceedings before the Interstate Commerce Commission or regulatory agencies of the several states, of the exercise of the right to petition regulatory agencies, legislative bodies or elected and appointed officials of the Federal Government, the several states, or political subdivisions of states, and of other activities which are a legitimate exercise of rights conferred by the constitutions and laws of the several states and by the Constitution and laws of the United States. Such activities do not fall within the scope of the antitrust laws.

28. Every common carrier by motor vehicle, including the plaintiff, has a duty to comply with all applicable statutes, ordinances and regulations

duly enacted or adopted by proper governmental authority. Such laws are established and enforced to protect the public interest, health and safety, and the plaintiff has no ground for complaint when any such law is applied to it. A common carrier by truck who complies with weight, speed, safety, hours of service, and traffic laws and other applicable regulations operates at a disadvantage in competition with carriers by truck who persistently violate such laws and regulations. A common carrier by motor vehicle who operates between points and over routes for which it holds no authority violates laws designed to promote and protect the public and private interest in fair competition. Extensive violations by common carriers by truck force other motor carriers into similar practices, and result in chaotic competitive conditions between all modes of transportation, including the railroads. Effective administration of Federal and state laws regulating common carriers requires that the carriers themselves initiate proceedings to enforce such laws, and participate in the proceedings. For example, the Motor Carrier Act contemplates that it will be enforced to a large degree by proceedings instituted by competing carriers, and the Interstate Commerce Commission has had available only limited personnel for direct enforcement of that Act and regulations issued thereunder. If the Motor Carrier Act is to be effectively enforced and the Congressional purpose of promoting fair competition in common carrier transportation achieved, it is essential for common carriers to cause enforcement of the Act by the various procedures available to them.

29. This defendant has participated in various proceedings before the Interstate Commerce Commission involving the plaintiff, including pending proceedings in which the plaintiff and approximately sixty other motor carriers applied for permanent authority to transport dangerous explosives over the public highways of forty-seven states. Plaintiff in the pending proceeding seeks a certificate of permanent authority to truck dangerous explosives in an area extending from Denver, Colorado, on the West to Boston, Massachusetts, on the East, and from Detroit, Michigan, on the North to Charlestown, West Virginia, on the South. Before the Commission may lawfully issue any such certificate

under the Motor Carrier Act, it must find that the applicant is fit, willing and able properly to comply with the law and regulations and to perform the service proposed. The Commission must also find that the proposed service is or will be required by the present or future public convenience or necessity. These statutory requirements raise numerous issues of law and fact which must be decided in proceedings before the Interstate Commerce Commission. The decision of those issues determines the existence and extent of a carrier's authority to engage in interstate transportation. In such proceedings no attorney of the Interstate Commerce Commission represents the public to insure that the statutory requirements are met. The Motor Carrier Act contemplates that the railroad and motor carrier competitors of an applicant for a certificate of convenience and necessity will present evidence and arguments that will aid the Commission in deciding whether the applicant is qualified and whether the proposed service is or will be required by the public convenience and necessity. Participation by this defendant in proceedings before the Interstate Commerce Commission relating to the plaintiff has been in full accordance with the Motor Carrier Act and the rules and practice of the Commission. Numerous governmental bodies and other public organizations also intervened or participated in such proceedings. Each of these bodies and organizations did so as a result of its independent decision that its action was desirable to protect the public interest or the interest of that portion of the public that the particular organization represented. The Interstate Commerce Commission has full power and right to control intervention and participation in the proceedings before it. Each organization that participated in proceedings before the Commission had a lawful right to do so.

Eleventh Defense

30. The plaintiff is precluded from obtaining injunctive relief or damages by its own illegal inequitable conduct as follows:

(a) A principal purpose of this suit is to gain publicity for plaintiff's allegations, and thereby to harass and impede this defendant and other railroads as competitors of the plaintiff in the interstate

transportation of dangerous explosives and other freight, and to harass, impede and discourage this defendant and others in the exercise of lawful rights to oppose the plaintiff in proceedings before the Interstate Commerce Commission;

(b) The Interstate Commerce Commission after determining that the plaintiff for many years had operated and was continuing to operate in the interstate transportation of dangerous explosives without authority granted by the Commission, ordered the plaintiff to cease and desist from such unlawful operations in excess of the authority granted by the Commission;

(c) The plaintiff for many years has violated the laws and regulations of states in which it conducts interstate transportation of dangerous explosives and other freight, and continues to do so;

(d) As a result of the manner in which plaintiff conducted its business in the State of Ohio, the Public Utilities Commission of Ohio on July 11, 1952 filed with the Interstate Commerce Commission a complaint alleging over five hundred and ninety violations by the plaintiff of the laws and regulations of Ohio during the period from January 11, 1950 through June 20, 1952, and praying that the Interstate Commerce Commission revoke the plaintiff's rights to operate as a motor carrier in and through the State of Ohio, a proceeding which is still pending for determination before the Interstate Commerce Commission;

(e) The plaintiff for many years has committed and continues to commit violations of the Interstate Commerce Act and of the Motor Carrier Safety Regulations of the Interstate Commerce Commission;

(f) For a number of years the plaintiff wilfully failed to render reasonably continuous and adequate service as a common carrier by motor vehicle between the points and over the routes named in its certificates, as it was required to do by the Motor Carrier Act, but

on the contrary attempted to transfer to other individuals and organizations authority to operate under the color of the plaintiff's certificates in exchange for paying the plaintiff a portion of the revenues derived from such operations; and the plaintiff persisted in this unlawful practice until after the Interstate Commerce Commission conducted an investigation, determined that the plaintiff was acting unlawfully, and ordered the plaintiff to change its methods of operation and to render service as required by law;

(g) In July, 1953, the United States Attorney filed a criminal information in the United States District Court for the District of Massachusetts, in which the plaintiff was charged in two counts for violation of the Interstate Commerce Act by unlawful control of another motor carrier and was further charged in thirteen additional counts with violation of that Act by aiding and abetting unauthorized transportation in interstate commerce;

(h) The plaintiff has engaged and continues to engage in the social entertainment of shippers and shippers employees to such an extent that the Interstate Commerce Commission has instituted an investigation to determine whether such entertainment constitutes a violation of federal laws and regulations;

(i) The plaintiff for many years beginning long prior to 1950 has neglected and refused to file reports and to keep accounts, records and memoranda as required by rules, regulations and orders duly issued by the Interstate Commerce Commission. During the same period the plaintiff has filed incorrect, untrue and incomplete reports and has failed to make full, true and correct entries in its accounts, records and memoranda as required by such rules, regulations and orders;

(j) The plaintiff for many years beginning long prior to 1950 has conducted its interstate transportation of property with inadequate, unsafe and improper equipment, has employed unfit drivers, has

followed unsafe and careless practices, and has disregarded the safety and welfare of other users of the highways, of the communities through which plaintiff transports freight and of all other persons who contribute as taxpayers to the construction and maintenance of the highways over which the plaintiff transports property by motor vehicle;

(k) By its continued violations of state and federal laws and regulations and by operating without authority granted by the Interstate Commerce Commission, the plaintiff sought to obtain and has obtained unfair competitive advantages over this defendant and over other interstate carriers of dangerous explosives and other freight.

Counterclaim

1. This Court has jurisdiction over this counterclaim under Title 28 U.S.C.A. § 1332.

2. The Pennsylvania Railroad Company, hereafter called this defendant, is a corporation organized and existing under the laws of the State of Pennsylvania. Riss & Company, Inc., hereafter called Riss, is a corporation organized and existing under the laws of the State of Colorado. The amount involved in this counterclaim exceeds the sum of \$3,000 exclusive of interest and costs.

3. This defendant is a common carrier of property by rail. It provides to all shippers who will use its services transportation of their property by rail. Such transportation of property by this defendant has been and is offered and provided as to the following types of movement of property:

(a) From any point upon its lines to any other point on such lines;

(b) In conjunction with connecting common carriers by rail, from any point upon its lines to any point served by any combination of connecting carriers by rail;

(c) In conjunction with connecting carriers by rail, from any point served by any combination of such connecting carriers to any point upon the lines of this defendant; and

(d) In conjunction with connecting carriers by rail, over the lines of this defendant as a part of the movement of property from an origin point served by some other carrier by rail to a destination point served by some other carrier by rail.

4. Transportation of property is a major source of revenue to this defendant. This defendant competes with other common carriers of property by rail and with common carriers of property by motor vehicle for such freight traffic. Freight consisting of manufactured articles, and particularly ammunition and explosives, is especially desirable from a revenue standpoint. Competition between common carriers of property is intense for the business of transporting manufactured articles, and especially for transporting ammunition and explosives.

5. The points between which Riss may lawfully transport property as an interstate or foreign common carrier by motor vehicle, the routes over which it may lawfully transport property as such a carrier, and the methods by which it may lawfully operate as such a carrier are determined by the Interstate Commerce Commission in the exercise of authority conferred upon it by the Congress in the Motor Carrier Act and related statutes. Except to the extent that the Commission has authorized Riss to operate as a common carrier of property by motor vehicle between specified points, over specified routes and in specified manners, all interstate and foreign transportation of property by Riss as a common carrier by motor vehicle has been and is unlawful.

6. Riss for many years has transported and continues to transport property as a common carrier by motor vehicle, including manufactured articles, and especially ammunition and explosives, in interstate and foreign commerce between points and over routes for which it did not and does not hold authority from the Interstate Commerce Commission.

7. The illegal operations of Riss without authority granted by the Interstate Commerce Commission have included and continue to include transportation of property by motor vehicle from points on this defendant's lines to other points served by it directly or in conjunction with connecting carriers by

rail, to points on defendant's lines from other points served by this defendant directly or in conjunction with connecting carriers by rail, and transportation from one point not on this defendant's lines to another point not on this defendant's lines where a logical and direct route by rail would have included transportation over this defendant's lines.

8. By such illegal operations Riss has diverted and transported property which would have been transported by this defendant but for the illegal operations of Riss. Such illegal diversions and operations thereby wrongfully deprived this defendant of the revenues it would have received for the transportation of the freight illegally transported by Riss.

9. In addition to its own illegal operations, Riss has aided and abetted other operators of motor vehicles to transport property unlawfully to the damage of this defendant, and has combined and contracted with such other operators to conduct such illegal operations. Riss for a number of years did not directly operate motor vehicles for the transportation of property, but instead unlawfully purported to authorize other persons and organizations to transport property by motor vehicle under color of the certificates issued to Riss by the Interstate Commerce Commission. Such other persons and organizations had no lawful authority to transport property by motor vehicle in competition with this defendant, but did so because Riss aided and abetted them, and pursuant to the combination and contracts with Riss.

10. The illegal operations that Riss aided and abetted, and that were conducted pursuant to the combination and contracts with Riss, included transportation of property by motor vehicle from points on this defendant's lines to other points served by it directly or in conjunction with connecting carriers by rail, to points on this defendant's lines from other points served by this defendant directly or in conjunction with connecting carriers by rail, and transportation from one point not on this defendant's lines to another point not on this defendant's lines where a logical and direct route by rail would have included transportation over this defendant's lines.

11. By aiding and abetting such illegal operations, and by combining and contracting with other persons and organizations to conduct such operations,

Riss caused property to be diverted and transported by motor carrier which would have been transported by this defendant but for the illegal actions of Riss. By such illegal actions Riss caused this defendant to be wrongfully deprived of such freight traffic and wrongfully deprived of the revenues this defendant would have received for the transportation of such freight.

12. This defendant does not presently know the precise amount of damage to it caused by the illegal operations and actions of Riss. Upon information and belief, the illegal operations and actions of Riss have damaged the defendant railroads in the amount of approximately one hundred million dollars (\$100,000,000), and have damaged this defendant in an amount in excess of ten million dollars (\$10,000,000).

WHEREFORE, this defendant demands:

- (a) That the complaint of Riss be dismissed;
- (b) Judgment against Riss for the sum of ten million dollars (\$10,000,000), or for such greater sum as may be proved at the trial as the damages to this defendant from the illegal operations and actions of Riss; and
- (c) Any other and further relief which the Court may find just and proper.

/s/ HUGH B. COX
JAMES H. McGLOTHLIN
Attorneys for the Defendant
THE PENNSYLVANIA RAILROAD COMPANY
701 Union Trust Building
Washington 5, D. C.

Covington & Burling
701 Union Trust Building
Washington 5, D. C.

Of Counsel

(CERTIFICATE OF SERVICE OMITTED)

(HEADING OMITTED) Civil Action No. 4056-54 Filed December 15, 1954

**MOTIONS TO QUASH RETURN OF SERVICE TO SUMMONS
AND TO DISMISS**

Now comes The Association of Western Railways, one of the defendants named in the above-entitled cause, and presents the following motions:

I

Motion to Quash Return of Service of Summons

The Association of Western Railways moves this Court to quash the service of summons in this case on the ground that the defendant has not been properly served; and in support thereof states:

1. Summons directed to this defendant was served on the Western Traffic Association at its office in the Sheraton Building in the District of Columbia on September 27, 1954.
2. No other summons directed to this defendant has been served on anyone.
3. The Western Traffic Association is not a department, subdivision, or agent of The Association of Western Railways, as shown by the attached affidavits.

II

Motion to Dismiss for Improper Venue

If the above motion is denied, The Association of Western Railways moves this Court to dismiss this action as to it because it is in the wrong district, and in support thereof states:

1. The Complaint alleges that this is an action arising under the anti-trust laws of the United States.
2. The Complaint alleges that The Association of Western Railways is an unincorporated association having its principal offices in Chicago, Illinois, and that the members of this Association are railroads in the western part of the United States.

3. Section 7 of the Sherman Act permits suit "in the district in which the defendant resides or is found." Section 4 of the Clayton Act permits suit "in the district in which the defendant resides or is found or has an agent."

4. The Association of Western Railways, as is shown by the attached affidavits, does not reside in the District of Columbia; it is not found in the District of Columbia; and it does not have an agent in the District of Columbia.

5. The Complaint alleges that the Western Traffic Association, on which summons directed to this defendant was served, has an office in the District of Columbia and is a department or subdivision of The Association of Western Railways. The attached affidavits show that the Western Traffic Association is not an agent of The Association of Western Railways.

Respectfully submitted,

SIDLEY, AUSTIN, BURGESS
& SMITH
11 South LaSalle Street
Chicago, Illinois
Of counsel

THE ASSOCIATION OF WESTERN RAILWAYS
[Signatures omitted]

[HEADING OMITTED] Civil Action No. 4056-54 Filed December 15, 1954

AFFIDAVIT

STATE OF ILLINOIS)
COUNTY OF COOK) ss.

DANIEL P. LOOMIS, being first duly sworn, deposes and says:

1. He is the chairman of The Association of Western Railways and, as such, is familiar with the organization and operations of that Association. He is also familiar with the operation of the Western Traffic Association.

2. The Association of Western Railways is an unincorporated association. It has no written articles of organization of any nature. Its principal personnel are as follows:

D. P. Loomis, Chairman
J. F. Blair, General Manager
R. F. Welsh, Executive Secretary

P. G. Otterback, Secretary
A. F. Hucksold, Auditor
W. R. Nugent, Assistant Auditor

LAW DEPARTMENT

J. H. Hays, Counsel
A. M. Mathews, Attorney
J. W. Nisbet, Attorney
Ed White, Attorney
J. E. Feeney, Attorney
C. K. Smith, Research Engineer
Frank E. Haas, Special Representative

PUBLIC RELATIONS DEPARTMENT

H. M. Sims, Director
P. D. Shoemaker, Assistant to Director
J. G. Pate, Assistant to Director
A. M. Rung, Assistant to Director
W. W. Abbey, Assistant to Director

3. The Association of Western Railways does not have any office in the District of Columbia. It does not have any officers or any employees or any other agent resident or located in the District of Columbia. It does not do business in the District of Columbia.

4. The Western Traffic Association is not a department, subdivision or agent of The Association of Western Railways. The Western Traffic Association is an unincorporated association and its members are not identical with the members of The Association of Western Railways. The Western Traffic Association is an organization established pursuant to a written agreement approved by the Interstate Commerce Commission, 276 ICC 183, under Section 5a of the Interstate Commerce Act. Its function is to assist in the administration of such agreements as are approved by the Commission pursuant to Section 5a of the Interstate Commerce Act, which specifically excludes such approved agreements from the antitrust laws.

5. The officers, employees and agents of the Western Traffic Association are not officers, employees or agents of the Association of Western Railways. They perform no services for the Association of Western Railways, either at Washington, D. C., or at any other place.

6. The funds of the Association of Western Railways are contributed by its members. None of these funds are used to pay for any services or to pay any expenses of the Western Traffic Association, its sub-organizations, or its agents or employees.

7. The Association of Western Railways has been designated as the agency to maintain the funds and accounts of each of the sub-organizations of the Western Traffic Association, pursuant to the articles of agreement of the latter association. The accounts of each sub-organization are maintained separately from those of each other sub-organization and from the accounts of the Association of Western Railways. The Association of Western Railways

collects and disburses the funds of the Western Traffic Association in accordance with the directions of the various sub-organizations. It contributes no funds of its own to the Western Traffic Association. The Association of Western Railways performs no other services for the Western Traffic Association, and the services described above are all performed at Chicago, Illinois. Further affiant saith not.
[NOTARY SEAL] /s/ DANIEL P. LOOMIS

[HEADING OMITTED] Civil Action No. 4056-54 Filed December 15, 1954
STATE OF ILLINOIS) ss.
COUNTY OF COOK)

AFFIDAVIT

H. C. Barron, being first duly sworn, deposes and says:

1. He is the chairman and counsel of the Executive Committee - Western Traffic Association. The Executive Committee - Western Traffic Association is the governing body of the Western Traffic Association. As chairman and counsel of the Committee he is the chief executive officer of the Western Traffic Association. As such, he is familiar with the organization and operations of the Western Traffic Association.

2. The Western Traffic Association is an unincorporated association. It is an organization approved under Section 5a of the Interstate Commerce Act by the Interstate Commerce Commission, as reported in 276 ICC 183. The Western Traffic Association exercises functions within the scope of said Section 5a, to wit, to provide procedures for the joint and consideration, initiation, or establishment of rates, fares, etc., applicable to interstate or foreign railroad transportation.

3. The Western Traffic Association is comprised of the Executive Committee, The Trans-Continental Freight Bureau, The Western Trunk Line Committee, the Southwestern Freight Bureau, the Texas-Louisiana Freight Bureau, the Pacific Southcoast Freight Bureau (formerly functioning as the Pacific Freight Tariff Bureau), and the North Pacific Coast Freight Bureau. Subdivisions of the regional freight organizations are the Montana Lines Committee of the Trans-Continental Freight Bureau, and the Minnesota Lines Committee, Colorado-Utah Committee, and Intermountain Committee, all of the Western Trunk Line Committee. The three passenger associations are the Trans-Continental Passenger Association, Western Passenger Association, and

Southwestern Passenger Association. The titles of the various organizations and sub-organizations indicate generally the areas of their jurisdiction.

4. The Western Traffic Association is not a department or sub-division of The Association of Western Railways.

5. The Western Traffic Association is not an agent of The Association of Western Railways. It performs no services for The Association of Western Railways either within the District of Columbia or at any other place.

6. The Association of Western Railways has been designated as the agency to maintain funds and accounts of the various sub-organizations of the Western Traffic Association, making disbursements as directed by each sub-organization. The accounts of each sub-organization of the Western Traffic Association are maintained separately from those of each other sub-organization and from those of the Association of Western Railways. No other services are performed by the Association of Western Railways for the Western Traffic Association, and all of these services are performed at Chicago, Illinois,

7. The Western Traffic Association-Executive Committee has an office and employees located in the Sheraton Building, 711 Fourteenth Street, Northwest, Washington, District of Columbia. This office is maintained solely for the benefit of the Western Traffic Association-Executive Committee, and these employees perform no services for the Association of Western Railways. The expenses of the office and the salaries of the employees are paid solely from the funds of the Western Traffic Association-Executive Committee.

Further affiant saith not.

/s/ H. C. Barron

Subscribed and sworn to before me this 6th day of December, 1954.

/s/ A. F. Hucksold

Notary Public

(HEADING OMITTED) Civil Action No. 4056-54 Filed February 15, 1954

ANSWER AND COUNTERCLAIM OF DEFENDANT THE ATCHISON,
TOPEKA AND SANTA FE RAILWAY COMPANY

The Atchison, Topeka and Santa Fe Railway Company (hereinafter called the defendant), for its answer to the complaint herein, states its defenses and counterclaims as follows:

First Defense

1. This defendant admits that, except for the primary and exclusive jurisdiction of the Interstate Commerce Commission over this entire controversy, this Court would have jurisdiction to hear plaintiff's alleged cause of action against this defendant, but denies each and every other allegation, conclusion and characterization contained in Paragraph 1 of the complaint.

2. This defendant is without knowledge or information sufficient to form a belief as to the allegations of Paragraph 2 of the complaint except that it admits that Riss & Company, Inc., is a common carrier of property by motor vehicle in interstate commerce and holds certain certificates of convenience and necessity and other operating authority issued by the Interstate Commerce Commission.

3. This defendant admits the allegations contained in the first, second, sixth, seventh and eighth sentences of Paragraph 3 of the complaint. It admits (a) that general supervision and control of the affairs of the Association of American Railroads is vested in a Board of Directors; (b) that the Association has a staff of paid personnel; and (c) that a section of the Association entitled "Competitive Transportation Research" reports to the Vice-President - Assistant to the President. It denies each and every other allegation, conclusion and characterization contained in this paragraph.

4. This defendant admits the allegations contained in the first sentence of Paragraph 4 of the complaint. It admits (a) that the members

of The Association of Western Railways include common carriers by railroad in interstate commerce in states west of the Mississippi and in Wisconsin and Illinois; (b) that The Association of Western Railways has a chairman, a staff of paid personnel, and a Law Department and a Public Relations Department; and (c) that the expenses of The Association of Western Railways are paid from funds contributed by its members. It denies each and every other allegation, conclusion and characterization contained in this paragraph.

5. This defendant admits the allegations contained in the first sentence of Paragraph 5 of the complaint. It is without knowledge or information sufficient to form a belief as to the truth of any of the other allegations contained in this paragraph, and denies each and every conclusion and characterization contained therein.

6. This defendant admits the allegations contained in the first sentence of Paragraph 6 of the complaint. It is without knowledge or information sufficient to form a belief as to the truth of any of the other allegations contained in this paragraph, and denies each and every conclusion and characterization contained therein.

7. This defendant is without knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in Paragraph 7 of the complaint, and denies each and every conclusion and characterization contained therein.

8. This defendant admits that the defendants named in Paragraph 8 of the complaint are common carriers by railroad. This defendant admits the allegations of sub-paragraph (C) (1) of this Paragraph. It denies that it regularly transacts business in the District of Columbia. It is without knowledge or information sufficient to form a belief as to the remaining allegations of Paragraph 8 of the complaint.

9. This defendant admits that the Association of American Railroads, The Association of Western Railways, Traffic Executive Association - Eastern Railroads, and Eastern Railroads Presidents Conference are unincorporated associations concerned with railroad matters, and that the defendants herein

include the largest railroads in the United States. It denies each and every other allegation, conclusion and characterization contained in Paragraph 10 of the complaint. (There is no Paragraph 9 in the complaint.)

10. This defendant admits the allegations contained in the first and second sentences of Paragraph 11 of the complaint. It denies each and every other allegation, conclusion and characterization contained in said Paragraph 11.

11. This defendant admits that plaintiff is a common carrier by motor vehicle of property in interstate commerce, and holds certain certificates of public convenience and necessity and other operating authority issued by the Interstate Commerce Commission. It is without knowledge or information sufficient to form a belief as to the remaining allegations of Paragraph 12 of the complaint.

12. This defendant denies each and every allegation, conclusion and characterization contained in Paragraphs 13, 14, 15, 16 and 17 of the complaint.

Second Defense

13. The complaint alleges and is based upon matters occurring prior to the limitations period provided for by Title 12, Section 201 of the District of Columbia Code (1951 Ed.), and hence the cause of action alleged therein is to that extent barred by the provisions of that statute.

Third Defense

14. The alleged activities of this defendant of which the plaintiff complains include (a) the solicitation of elected or appointed officials of state governments to take action against plaintiffs provided for or required by the laws of various states; (b) the solicitation of elected or appointed officials of state and local governments to enact legislation; (c) the solicitation of elected or appointed officials of state and local governments to enforce the laws; and (d) the presentation to the Interstate Commerce Commission of facts and arguments in proceedings before the Commission. Any such activities of the defendant

as thus alleged were an exercise of the rights of this defendant to assemble with others and petition the Government for a redress of grievances as guaranteed by the First and Fifth Amendments to the Constitution of the United States.

15. The alleged activities of this defendant of which plaintiff complains include the preparation, circulation, and publication of statements concerning the plaintiff, the operations conducted by plaintiff, and the character and conduct of plaintiff's officers. Any such statements made as thus alleged were true in fact and were fair comment on matters of public interest, and were an exercise of the right of free speech and press guaranteed to these defendants by the First Amendment to the Constitution of the United States.

16. The alleged activities of this defendant which plaintiff seeks to enjoin include the publication of statements concerning plaintiff, the operations conducted by plaintiff, and the character and conduct of plaintiff's officers. The enjoining, restraining or prohibiting of the publication of such statements would violate the rights conferred on this defendant by the First Amendment to the Constitution of the United States.

17. The alleged activities of this defendant of which plaintiff complains include the preparation, circulation and publication of statements concerning the plaintiff, the operations conducted by plaintiff, and the character and conduct of plaintiff's officers. The Sherman Act (15 U.S.C.A. §§ 1 and 2) does not prohibit or restrict such activities of this defendant, and any construction of that Act as prohibiting or restricting such activities would render it unconstitutional as an abridgment of the guarantee of freedom of speech and of the right to assemble and petition conferred on this defendant by the First and Fifth Amendments to the Constitution of the United States.

Fourth Defense

18. Plaintiff's alleged cause of action and the damages sought in the complaint purport to be grounded upon plaintiff's own unlawful conduct, as set forth in further detail below, and upon the orders of regulatory agencies,

having jurisdiction in the premises, restraining it from continuing its unlawful conduct, and by reason thereof plaintiff is not entitled to any relief herein.

19. The plaintiff for many years, beginning long prior to 1950, has operated in the interstate transportation of explosives without legal authority granted by the Interstate Commerce Commission and in violation of Section 206 of Part II of the Interstate Commerce Act (49 U.S.C.A. § 306). The illegality of many of plaintiff's operations has been determined by orders of the Interstate Commerce Commission requiring the plaintiff to cease and desist from such violations.

20. The plaintiff for many years, beginning long prior to 1950, wilfully failed to render continuous and adequate service as a common carrier by motor vehicle between the points and over the routes named in its certificates, as it was required to do by Part II of the Interstate Commerce Act, 49 U.S.C.A. § 301 et seq. Plaintiff attempted to transfer to other individuals and organizations authority to operate under the color of plaintiff's certificates in exchange for paying the plaintiff a portion of the revenues derived from such operations. As a result of plaintiff's illegal conduct, the Interstate Commerce Commission, after investigation and hearing, determined that plaintiff was acting unlawfully, and ordered plaintiff to render service as required by law.

21. The plaintiff on or about December 12, 1951 entered into a transaction with Jarman Transportation Company, Incorporated, by which control or management in a common interest of plaintiff and Jarman Transportation Company, Incorporated, was effectuated or accomplished in violation of Section 5(4) of the Interstate Commerce Act as amended (49 U.S.C.A. § 5(4)); and such violation of law continued until on or about August 1, 1953.

22. As a result of the conduct of plaintiff, in July, 1953, the United States Attorney filed a criminal information in the United States District Court for the District of Massachusetts in which plaintiff was charged

in two counts for violation of the Interstate Commerce Act by unlawful control of another motor carrier and was further charged in thirteen additional counts with violation of the Act by aiding and abetting unauthorized transportation in interstate commerce.

23. The plaintiff for many years, beginning long prior to 1950, has frequently, consistently, and flagrantly violated the laws and regulations of the states in which it conducts interstate transportation of explosives and other freight, and continues to do so. As an example of such conduct, defendant is informed and believes, and therefore states that plaintiff committed approximately five hundred and ninety violations of the laws and regulations of the State of Ohio during the period between January 11, 1950 and June 20, 1952.

24. As a result of plaintiff's conduct and operations, as set forth above, plaintiff has on numerous occasions been prosecuted for violations of various federal, state, and local laws, regulations and ordinances. Examples of such prosecutions, during the period from April 2, 1950, to December 19, 1950, were the convictions for thirty-three overweight violations in the State of Illinois, and the finding that at least one of plaintiff's trailers was in violation of Illinois law governing the length of equipment.

25. As a result of plaintiff's conduct of its operations in the State of Ohio, as set forth above, the Public Utilities Commission of that state filed a complaint with the Interstate Commerce Commission on July 11, 1952. This complaint alleged numerous violations of the laws and regulations of the State of Ohio, and prayed that the Interstate Commerce Commission revoke plaintiff's rights to operate as a motor carrier in and through the State of Ohio. The proceeding initiated by this complaint is still pending before the Interstate Commerce Commission.

26. As a result of plaintiff's conduct of its operations in the State of Illinois, as set forth above, the prosecuting authorities of that state instituted proceedings entitled "People v. Riss, No. 52-42, " in the Circuit Court of Salem County, Illinois, against the plaintiff based upon the habitual violation of maximum weight and load limits prescribed by the State of Illinois.

27. The plaintiff for many years, beginning long prior to 1950, has committed and continues to commit numerous violations of the Motor Carrier Safety Regulations promulgated by the Interstate Commerce Commission under the authority vested in it by Section 204 of Part II of the Interstate Commerce Act (49 U.S.C.A. § 304), such acts of the plaintiff constituting violations of Section 222 of Part II of the Interstate Commerce Act (49 U.S.C.A. § 322). As an example of such conduct, reports to the Interstate Commerce Commission by plaintiff show that in a twenty-one months period from January, 1950, to September, 1951, both inclusive, plaintiff committed four thousand, three hundred forty-nine violations of the Commission's hours-of-service regulations. As a further example of such conduct, in seven days in November, 1951, plaintiff's tractor-trailer units carrying dangerous explosives in the states of Oklahoma, Kansas, and Missouri failed in at least thirty-five instances to come to a stop at railroad crossings, in violation of the Commission's Safety Regulation requiring such a stop.

28. The plaintiff for many years, beginning long prior to 1950, has failed to comply with the rules, regulations, and orders issued by the Interstate Commerce Commission under the provisions of Section 220 of Part II of the Interstate Commerce Act (49 U.S.C.A. § 320), as amended. Defendant is informed and believes, and therefore states that the plaintiff has failed to file reports and failed to keep accounts, records, and memoranda as required by such rules, regulations, and orders, and that the plaintiff has filed incorrect, untrue, and incomplete reports and has failed to make full, true, and correct entries in its accounts, records, and memoranda as required by such rules, regulations and orders. Such acts of the plaintiff constitute violations of Section 222 of Part II of the Interstate Commerce Act (49 U.S.C.A. § 322).

29. The plaintiff for many years, beginning long prior to 1950, has conducted its operations with inadequate, unsafe, and improper equipment, by the following of unsafe and careless practices, and by disregarding the safety and welfare of other users of the highways, of the communities

through which plaintiff's trucks are driven, and of all others. As an example of such conduct, the four thousand three hundred forty-nine violations of the Commissions' hour-of-service regulations set forth in Paragraph 27 above involved repeated offenses by individual drivers, and in the month of June, 1950, more than one-fourth of the drivers employed by plaintiff committed one or more offenses.

30. By its continued violations of state and federal laws and regulations and by operating without authority granted by the Interstate Commerce Commission, plaintiff has, for many years, beginning long prior to 1950, sought to obtain, and has obtained, unfair competitive advantages over this defendant and other common carriers of freight.

31. As a result of the manner set forth above in which Riss has conducted its operations, vehicles operated by Riss have been involved in numerous accidents endangering and damaging both property and people.

32. As a result of plaintiff's conduct and operations, as set forth above, various state and local officials and citizens have discussed, debated, or adopted statutes, ordinances, and regulations affecting the operations of the plaintiff.

Fifth Defense

33. By the Transportation Act of 1940, the Congress prescribed and enacted a national transportation policy, 54 Stat., 899, which is declaratory of the national public interest. The national transportation policy so enacted provides the standards for fair and impartial regulation of all modes of transportation subject to the provisions of the Interstate Commerce Act, including the operations of plaintiff and of this defendant. Such national transportation policy is "to promote safe, adequate, economical, and efficient service" for the shipping public, to "foster sound economic conditions in transportation and among the several carriers," to eliminate "unfair or destructive competitive practices," and "to cooperate with the several states and the duly authorized officials thereof," all for the purpose of developing and preserving a national transportation system adequate to meet the needs of the commerce of the United States and of the national defense.

34. This enactment of a national transportation policy constitutes a more recent and a more specific expression of public policy than that embodied in the Sherman Act, and provides the basic determinants for the conduct of this defendant and all other common carriers subject to the Interstate Commerce Act.

35. Common carriers by rail, including this defendant, have, beginning long prior to 1950, suffered substantial losses in the proportion of their high-rated traffic to their low-rated traffic. Plaintiff and other common carriers by motor vehicle have largely limited their holding out to high-rated traffic. In applying for authority to operate over new and additional routes in competition with rail carriers, motor vehicle carriers, including the plaintiff, have limited and continue to limit their applications to high-profit, high-rated commodities, unlike this defendant and other rail carriers, who must carry low-rated, low-profit commodities as well. As a result, motor carriers, including the plaintiff, are obtaining an increasing share of the more remunerative freight traffic available. In this manner, the profit position and economic strength of rail carriers in general, and of this defendant in particular, is being weakened. If long continued, these trends will bring about a deterioration of rail service, a necessary increase of freight rates, and the undermining of the national transportation policy.

36. By reason of its illegal and inequitable conduct previously set forth in this answer, plaintiff has secured traffic which would otherwise have been shipped over the lines of the defendant, has reduced its cost of operations and increased its profits, has obtained unfair competitive advantages over the defendant, and has damaged the business and profits of this defendant. Plaintiff's repeated and frequent violations of state and federal laws and regulations, plaintiff's conduct of operations without lawful authority, plaintiff's disregard of the safety of the public, and plaintiff's practices which have resulted in unfair and uneconomic competition, all as alleged previously in this answer, have been and continue to be in violation and destructive of the national transportation policy.

37. This defendant, as a common carrier subject to the Interstate Commerce Act, has a duty and a right to assist in the promotion of the national transportation policy. Effective administration of that policy contemplates that common carriers themselves shall initiate proceedings and take action to enforce both federal and state laws and regulations, and to eliminate unfair, unsafe, and uneconomic practices. For example, Part II of the Interstate Commerce Act (49 U.S.C.A. § 301, et seq.) contemplates enforcement to a substantial extent through proceedings initiated by competing carriers. The Interstate Commerce Commission has had available no more than a limited personnel to obtain enforcement of that Act and the regulations issued thereunder, and action by competing carriers is essential to such enforcement.

38. The rules of procedure and the practices followed by the Interstate Commerce Commission and state regulating agencies are designed to encourage, and have the effect of necessitating, joint action by carriers in their participation in proceedings, in their presentation of evidence, and in their argument of controversial matters. Such joint action is reasonable and necessary to the effectuation of the national transportation policy.

39. Plaintiff has initiated numerous proceedings before the Interstate Commerce Commission, including a pending proceeding in which the plaintiff and approximately sixty other motor carriers applied for permanent authority to transport dangerous explosives over the public highways of forty-seven states. Dangerous explosives constitute a high-rated commodity. This defendant has long offered to transport, and has transported, dangerous commodities, including munitions and explosives, on its lines, and has expended large sums in equipment, facilities, and the training of personnel. Plaintiff in the pending proceeding seeks a certificate of permanent authority to truck dangerous explosives in an area extending from Denver, Colorado, on the west, to Boston, Massachusetts, on the east. Many of the routes covered by plaintiff's application would compete with the service offered by this defendant in the transportation of dangerous explosives. Plaintiff's application raises numerous issues of law and fact, including the public convenience

or necessity of the proposed service, and the fitness and ability of the plaintiff to provide such service safely, economically, and efficiently.

40. Part II of the Interstate Commerce Act (49 U.S.C.A. § 301 et seq.) and the rules and regulations thereunder contemplate that railroad and motor carrier competitors of applicants for authority to operate will appear, present evidence, and advance arguments which will aid the Commission in its decision upon the issues of fact and law. Rail carriers and other motor carriers have therefore participated before the Interstate Commerce Commission in the pending proceeding in which plaintiff and other applicants seek permanent authority to transport dangerous explosives over the public highways of forty-seven states.

41. The application of the plaintiff and other motor carriers now pending before the Interstate Commerce Commission, as set forth in paragraph 39 above, and any other proceeding involving plaintiff in which this defendant may have participated, have in all instances involved decisions directly affecting the business, the profits, and the economic future of this defendant. In such proceedings, the other rail carriers in such proceedings have been the reasonable, ordinary, and necessary result of the issues raised and the actions of the plaintiff.

42. The participation by this defendant in proceedings before the Interstate Commerce Commission has at all times been in pursuance and furtherance of the national transportation policy, and was an exercise of the rights and duties conferred on this defendant by that policy and by Part II of the Interstate Commerce Act, 49 U.S.C.A. § 301 et seq.

43. Numerous governmental bodies and other public organizations have also intervened or participated in proceedings before the Interstate Commerce Commission involving the plaintiff in which this defendant has participated. Each of these bodies and organizations intervened or participated as a result of its independent decision that such action was necessary by reason of their respective interests and plaintiff's illegal and improper conduct previously set forth in this answer.

Sixth Defense

44. The complaint seeks injunctive relief under the antitrust laws against the defendant, which is a common carrier subject to the provisions of the Interstate Commerce Act. This relief is sought with respect to matters subject to the regulation, supervision or other jurisdiction of the Interstate Commerce Commission, and hence cannot be granted plaintiff under the provisions of Section 16 of the Clayton Act (15 U.S.C. § 16).

45. The alleged actions of the defendant upon the basis of which the plaintiff seeks to recover damages in this case are matters which in whole or in part fall within the primary or exclusive jurisdiction of the Interstate Commerce Commission, and are not cognizable by this Court in a suit brought under the antitrust law.

46. The complaint contains allegations of matters of fact which require prior determination by the Interstate Commerce Commission and are not cognizable by this Court under the antitrust laws. Such matters have not yet been acted upon, determined, or decided by the Interstate Commerce Commission are related to and essential to the full determination of all other matters of fact and conclusions of fact alleged in the complaint.

47. The complaint seeks to review the action of the Interstate Commerce Commission in the proceedings pending before the Commission entitled "Application of Riss and Company, Inc., for a Certificate of Public Convenience and Necessity to Extend its Operations as a Common Carrier," Docket No. MC-200 (Sub-No. 84) and to review the action of the Commission in other proceedings before it involving the plaintiff, or to anticipate rulings of the Commission in said proceedings, all in contravention of the provisions of Chapter 157 of the Judicial Code of the United States (28 U.S.C.A. § 2321-2325).

48. The complaint is based upon charges against this defendant as to which the plaintiff has not exhausted its administrative remedies under the Interstate Commerce Act, and are not cognizable by this Court in a suit brought under the antitrust laws.

Seventh Defense

49. The damages which plaintiff seeks to recover are the result of actions taken by courts and quasi-judicial agencies based on reasonable cause, and of actions of legislative bodies based on the decisions of such bodies, and are not the proximate result of any action by this defendant.

Eighth Defense

50. The complaint herein fails to state a claim against this defendant upon which relief can be granted.

COUNTERCLAIM

1. The jurisdiction of this Court to hear this counterclaim pursuant to Rule 13, Federal Rules of Civil Procedure, is based upon District of Columbia Code, Section 11-306; 28 U.S.C. §§ 1332, 1337; and the Interstate Commerce Act, Part II, §§ 206, 220, 222; 49 U.S.C.A. §§ 306, 320, 322.

2. The amount in controversy under this counterclaim, exclusive of interest and costs, far exceeds \$3,000.

3. Defendant and counterclaimant, The Atchison, Topeka and Santa Fe Railway Company, (hereinafter referred to as the counterclaimant), is a corporation organized and existing under the laws of the State of Kansas, and has its principal offices in Chicago, Illinois.

4. Plaintiff and counterclaim-defendant, Riss & Company, Inc., (hereinafter referred to as "Riss") is a corporation organized and existing under the laws of the State of Colorado, and at all times material hereto has been engaged in business in the District of Columbia.

5. Counterclaimant is a common carrier by rail engaged in interstate and intrastate commerce in the States of Illinois, Missouri, Kansas, Iowa, Colorado, Nebraska, New Mexico, Arizona, California, Louisiana, Oklahoma, and Texas.

6. Pursuant to lawful authority and to duly published tariffs, counterclaimant at all times material hereto has offered to transport, on behalf of the shipping public generally, all goods, commodities, and property capable of transportation by rail through its facilities:

- (a) From any point upon its lines to any other points on its lines;
- (b) In connection with other carriers by rail, from or to any point upon its lines to or from any point served by any combination of carriers by rail connecting directly or through other carriers by rail with the counterclaimant;
- (c) In connection with other carriers by rail, from or to points served by other carriers by rail by through routes including the lines of the counterclaimant to or from points served by still other carriers by rail.

Included in the commodities which counterclaimant offers to transport in the above manner are explosives and all other commodities which Riss has authority to transport by motor vehicle.

7. The interstate operations of counterclaimant as a common carrier are subject to the provisions of Part I of the Interstate Commerce Act, Title 49, U.S.C.A. §§ 1 through 27. The intrastate operations of counterclaimant as a common carrier are in all instances subject to the laws of the several states in which the lines of the counterclaimant are located regulating common carriers by rail. The points between which counterclaimant may lawfully transport property, the routes by which counterclaimant and other carriers by rail may offer to transport property, the rates which counterclaimant may charge, and the methods by which counterclaimant may lawfully operate are prescribed by law or determined by the Interstate Commerce Commission or a similar state regulatory agency.

8. Counterclaimant competes for freight traffic with all other common carriers of property by rail and by motor vehicle serving the same points as are served by counterclaimant. The revenues and profits of counterclaimant depend in large measure not only on the volume of traffic transported by it, but also on the nature of the commodities carried, the rates at which such commodities are carried, and the expenses incurred in conducting its

operations in full compliance with the provisions of applicable federal and state laws. Freight consisting of manufactured articles, including munitions and explosives, is especially desirable from a revenue standpoint.

9. Riss is a common carrier of property by motor vehicle engaged in both interstate and intrastate commerce in various states, including Illinois, Missouri, Kansas, Iowa, Colorado, Nebraska, Oklahoma, and Texas. Riss offers to transport, and does transport, limited kinds of commodities, which largely consist of manufactured articles, including munitions and explosives, and other commodities which are highly desirable from a revenue standpoint to and from all points served by it. Riss has also entered into arrangements by which it interlines traffic under joint rates with other carriers by motor vehicle serving many points throughout the nation.

10. The points between which Riss may lawfully transport property as a common carrier by motor vehicle, the routes over which Riss may lawfully transport property as such a carrier, the rates which it may charge, the circumstances under which it may interline traffic with other carriers, and the methods by which Riss may lawfully operate as a common carrier are prescribed by federal or state law or determined by the Interstate Commerce Commission or state regulatory agencies. Except to the extent that the Interstate Commerce Commission has authorized Riss to operate in interstate commerce as a common carrier of specified property by motor vehicle between specified points, over specified routes, and in specified manners, all interstate transportation of property by Riss as a common carrier by motor vehicle has been and is unlawful.

11. The maximum loads which the vehicles operated by Riss may lawfully carry, the maximum length of equipment which Riss may lawfully use in the transport of property over the public highways of the several states in which Riss operates as a common carrier by motor vehicle, the speed at which Riss vehicles may be driven, the traffic laws which Riss vehicles must observe, the types of equipment which Riss may use, the safety appliances which Riss equipment must contain, and the length of time during which

Riss drivers may drive or remain on duty, are all prescribed by the laws of the United States or of the several states or by the Interstate Commerce Commission or the appropriate regulatory agencies of the states.

12. Beginning in or before 1940, Riss has engaged without lawful authority in the transportation of property by motor vehicle in interstate commerce between points and over routes for which it did not and does not hold authority from the Interstate Commerce Commission. Such transportation without lawful authority included the transportation of manufactured articles, especially munitions and explosives, to or from points served by counterclaimant directly or in conjunction with other carriers. The amount of freight revenues derived by Riss from its illegal operations have exceeded \$96,000,000.

13. Pursuant to Part II of the Interstate Commerce Act, Title 49, U.S.C.A. §§ 301 et seq., the primary and exclusive jurisdiction to determine the existence, scope, and effect of the authority of Riss to carry on interstate operations is vested in the Interstate Commerce Commission. By its report and order dated June 2, 1952, entitled "Riss & Company, Inc., Interpretation of Temporary Authority," 54 M.C.C. 531, the Interstate Commerce Commission, after proceedings which began in or about 1942, decided and determined that Riss had engaged in numerous extensive illegal operations. Said report and order was sustained in the courts (117 F. Supp. 296; 346 U.S. 890) and became final on or about November 10, 1953.

14. By the illegal operations referred to in Paragraphs 12 and 13 above, Riss has diverted to itself and has transported property which would otherwise have been transported by this defendant. Such illegal diversions and transportation thereby have deprived counterclaimant of the revenues and profits it would have received from the transportation of freight thus illegally transported by Riss.

15. In addition to the illegal operations set forth in Paragraphs 12 and 13 above, Riss has for many years aided and abetted other operators of motor vehicles to transport property without lawful authority, including the

transport of property which but for such operations would have been transported by counterclaimant. For a number of years, Riss did not itself operate motor vehicles for the transportation of property between many points and over many routes which Riss was authorized or claimed to be authorized to serve. Instead, Riss unlawfully encouraged, aided, and induced other persons and organizations to transport property by motor vehicle under the color of purported authority possessed by or claimed by Riss. Such other persons and organizations had no lawful authority to transport property by motor vehicle in competition with counterclaimant, but did so because Riss aided, abetted, and induced them to do so, and pursuant to this combination and contracts with Riss.

16. By its conduct as set forth in Paragraph 15, Riss caused freight to be diverted and transported by motor carrier which would otherwise have been transported by counterclaimant.

Such illegal diversions and transportation of freight and conduct of Riss thereby deprived counterclaimant of the revenues and profits it would have received from the transportation of freight thus illegally transported by others.

17. In addition to the illegal operations and conduct set forth in Paragraphs 12, 13 and 15 above, Riss on or about December 12, 1951, entered into a transaction with Jarman Transportation Company, Incorporated (hereinafter called "Jarman") by which control or management in a common interest of Riss and Jarman was effectuated or accomplished in violation of Section 5(4) of the Interstate Commerce Act as amended, Title 49, U.S.C.A. Sec. 5(4). Such violation of law continued on or about August 1, 1953.

18. As a result of the unlawful control of management in a common interest, set forth in Paragraph 17 above, Riss and Jarman caused property to be transported by motor vehicle by Riss which would otherwise have been transported by counterclaimant. Such illegal transportation of freight and conduct thereby deprived counterclaimant of the revenues and profits it would have received from the transportation of freight thus illegally transported.

19. In addition to the illegal operations and conduct set forth in Paragraphs 12, 13, 15, and 17 above, Riss has for many years repeatedly transported freight in violation of federal and state laws and regulations prescribing the maximum weight of loaded vehicles, the maximum length of equipment, the speed at which motor vehicles may be driven, the traffic rules which motor vehicles must obey, the safety appliances which must be provided, the length of time in which vehicles may be driven without rest, and the length of time in which drivers may continue to operate vehicles or remain on duty.

20. By the unlawful operations set forth in Paragraph 19, Riss has obtained competitive advantages in the apparent rapidity of its service, and the amount of excess traffic handled by its equipment and drivers. By these unlawful operations Riss has obtained and transported freight which would otherwise have been transported by counterclaimant. By diverting freight to its illegal operations, Riss has deprived counterclaimant of the revenues and profits it would have received from the transportation of such freight.

21. In addition to the unlawful operations and conduct set forth in Paragraphs 12, 13, 15, 17, and 19 above, Riss, beginning long prior to 1950, instituted a campaign of unfair competitive practices against counterclaimant through the preparation, circulation, and publication of false and malicious statements concerning the transportation of goods by rail. By such practices Riss has caused and induced shippers to divert traffic from counterclaimant which would otherwise have been routed over it.

22. The aforesaid unlawful acts of Riss have resulted in the counterclaimant being illegally prevented by Riss from securing a large and profitable volume of shipments which it would otherwise have obtained. The aforesaid unlawful acts of Riss have caused the counterclaimant to incur expenditures in combatting the unlawful interference of Riss with its business. The aforesaid unlawful acts of Riss have resulted in the lowering of its operating costs and in the concealment of the facts as to its fitness as a common carrier, and have thus enabled Riss to extend and continue its unlawful competition and operations.

23. Counterclaimant is informed and believes, and therefore states that the total revenues derived and obtained by Riss from its illegal operations, conduct, and actions described above are far in excess of \$100,000,000.

24. Counterclaimant does not presently know the precise amount of total damages caused it by the aforesaid illegal operations, conduct and action of Riss. The specific names of shippers, nature of shipments, revenue derived therefrom, and other information necessary to the exact computation of damages are within the knowledge of Riss or recorded in the books required by law to be kept by Riss. Counterclaimant is informed and believes and therefore states that its damages are in excess of \$5,000,000.

WHEREFORE, defendant and counterclaimant asks judgment against plaintiff (a) dismissing the plaintiff's complaint herein; (b) granting this defendant and counterclaimant judgment on its Counterclaim against plaintiff, and (c) granting this defendant and counterclaimant such other relief as is just.

Lawrence Cake
1001 Connecticut Avenue, N. W.
Washington, D. C.

Other signatures omitted

SIDLEY, AUSTIN, BURGESS & SMITH
11 South La Salle Street
Chicago, Illinois
Of Counsel



(HEADING OMITTED) Civil Action No. 4056-54 Filed December 17, 1954

**ANSWER OF DEFENDANT TRAFFIC EXECUTIVE
ASSOCIATION - EASTERN RAILROADS**

Defendant Traffic Executive Association - Eastern Railroads (hereinafter referred to as this defendant), by its attorneys, for itself and for itself alone, answers the complaint herein as follows:

First Defense

1. Denies the allegations and each of them contained in paragraph 1 of the complaint, except that it admits that plaintiff seeks to invoke the jurisdiction of this Court under Section 7 of the Sherman Act and Sections 4, 12 and 16 of the Clayton Act.

2. Denies that it has any knowledge or information sufficient to form a belief as to the truth of the allegations or any of them contained in paragraph 2 of the complaint, except that it admits that plaintiff is a common carrier of property by motor vehicle in interstate commerce and that plaintiff holds certain certificates of public convenience and necessity and other operating authority issued by the Interstate Commerce Commission.

3. Admits the allegations contained in the first and second sentences of paragraph 3 of the complaint. Denies the allegations and each of them contained in the last sentence of paragraph 3 of the complaint, except that it admits that defendant Association of American Railroads (hereinafter sometimes called "AAR") transacts business in the District of Columbia. Denies that it has any knowledge or information sufficient to form a belief as to the truth of the remaining allegations or any of them contained in paragraph 3 of the complaint, except that it admits (a) that general supervision and control of the affairs of defendant AAR are vested in a Board of Directors; (b) that defendant AAR has an organization and staff of paid personnel; (c) that the functions and operations of defendant AAR are divided into departments and bureaus, and one such department is the Public Relations Department; and (d) that assessments are levied upon member railroads of defendant AAR.

4. Admits the allegations contained in the first sentence of paragraph 4 of the complaint. Denies the allegations and each of them contained in the last sentence of paragraph 4 of the complaint. Denies that it has any knowledge or information sufficient to form a belief as to the truth of the remaining allegations or any of them contained in paragraph 4 of the complaint, except that it admits (a) that membership of defendant The Association of Western Railways (hereinafter sometimes called "Western Railways") includes common carriers by railroad in interstate or foreign commerce; (b) that defendant Western Railways has a chairman, a staff of paid personnel, a Law Department and a Public Relations Department; and (c) that assessments are levied upon member railroads of defendant Western Railways.

5. Admits the allegations contained in the first, fifth and sixth sentences of paragraph 5 of the complaint. Denies the remaining allegations and each of them contained in paragraph 5 of the complaint, except that it admits (a) that its membership includes common carriers by railroad in interstate or foreign commerce; (b) that it has a chairman who is its chief administrative officer, and a staff of paid personnel; and (c) that the expenses of this defendant, including the salaries of its officers and employees, are paid through assessments levied upon its member railroads.

6. Admits the allegations contained in the first and second sentences of paragraph 6 of the complaint. Denies that it has any knowledge or information sufficient to form a belief as to the allegations or any of them contained in the sixth sentence of paragraph 6 of the complaint. Denies the remaining allegations and each of them contained in paragraph 6 of the complaint, except that it admits (a) that defendant Eastern Railroad Presidents Conference (hereinafter sometimes called "Presidents Conference") has a chairman and a staff of paid personnel; (b) that defendant Presidents Conference is composed of committees and sub-committees including an Executive Committee; and (c) that the expenses of defendant Presidents Conference including the salaries of its officers and employees are paid through assessments levied upon the railroads whose executive officers are members of defendant Presidents Conference.

7. Denies the allegations and each of them contained in the last sentence of paragraph 7 of the complaint, except so much of said sentence as alleges that defendant Carl Byoir and Associates, Inc. (hereinafter sometimes called "Byoir") regularly transacts business in the District of Columbia, and, as to that portion of said last sentence and the remaining allegations and each of the contained in paragraph 7 of the complaint, denies that it has any knowledge or information sufficient to form a belief as to their truth.

8. Denies that it has any knowledge or information sufficient to form a belief as to the truth of the allegations or any of them contained in paragraph 8 of the complaint, except that it admits that the common carriers by railroad listed in such paragraph 8 are named as defendants in the action, and are sometimes referred to collectively in the complaint as the "defendant railroads".

9. Avers that the complaint contains no paragraph 9.

10. Denies the allegations and each of them contained in paragraph 10 of the complaint, except that it admits that it and defendants AAR, Western Railways and Presidents Conference are unincorporated associations whose membership represents or includes common carriers by railroad, and that the eighty-five railroads named as defendant railroads include the largest railroads in the United States.

11. Denies the allegations and each of them contained in paragraph 11 of the complaint, except that it admits that transportation of property in interstate or foreign commerce has some relation to the production, distribution and consumption of certain goods and services, to some aspects of national defense, to the cost of certain goods and services, and to certain industries.

12. Denies that it has any knowledge or information sufficient to form a belief as to the truth of the allegations or any of them contained in paragraph 12 of the complaint, except that it admits that plaintiff is a common carrier by motor vehicle of property in interstate commerce and that plaintiff holds certain certificates of public convenience and necessity and other operating authority issued by the Interstate Commerce Commission.

13. Denies the allegations and each of them contained in paragraphs 13, 14, 15, 16, and 17 of the complaint.

Second Defense

14. The complaint fails to state a claim against this defendant upon which relief can be granted.

Third Defense

15. The claim stated in the complaint for damages alleged to have been suffered by plaintiff covers a period in excess of the period of limitation provided for by Title 12, Section 201 of the District of Columbia Code (1951 Ed.), and to that extent is barred by the provisions of that statute.

Fourth Defense

16. The complaint seeks injunctive relief under the antitrust laws against common carriers subject to the provisions of the Act to Regulate Commerce, in respect of matters subject to the regulation, supervision or jurisdiction of the Interstate Commerce Commission. Under the provisions of Section 16 of the Clayton Act (15 USC §26) plaintiff is not entitled to such relief.

Fifth Defense

17. Plaintiff seeks injunctive relief and to recover damages with respect to alleged impairment, restriction and impeding of, and alleged injury to, transportation operations which were, during the period of time referred to in the complaint, conducted by plaintiff in violation of provisions of the Interstate Commerce Act and regulations promulgated thereunder and in violation of state laws and regulations.

Sixth Defense

18. The complaint seeks to establish a claim for injunctive relief and for damages upon allegations that defendants, for the purpose of effectuating the alleged agreement, combination and conspiracy, solicited federal, state

and municipal officers and governments to enact or to enforce statutes, ordinances or regulations affecting plaintiff, intervened and participated in administrative proceedings before the Interstate Commerce Commission or regulatory bodies of the several states affecting plaintiff, and prepared, circulated and published statements concerning plaintiff. Such allegations do not constitute a cause of action under the antitrust laws, and such laws would be unconstitutional if interpreted or applied to abridge the exercise of this defendant's constitutional rights of free speech and of assembly and petition, and would be further unconstitutional if interpreted or applied to authorize injunctions limiting or prohibiting the exercise of such rights by this defendant.

Seventh Defense

19. The complaint seeks to establish a claim for injuries alleged to have been suffered by plaintiff as an immediate or ultimate consequence of actions which in whole or in part fall within the exclusive or primary jurisdiction of the Interstate Commerce Commission and therefore are not cognizable by this Court in a suit brought under the antitrust laws.

Eighth Defense

20. The complaint seeks to establish a claim for damages and for injunctive relief upon allegations of matters of fact which are not cognizable by this Court until after prior action by the Interstate Commerce Commission or state regulatory bodies. The matters of fact alleged in the complaint which are not cognizable by this Court until they have been acted upon, determined or decided by the Interstate Commerce Commission or state regulatory bodies, are related to, inseparable from and essential to the full determination of other matters of fact and conclusions of fact alleged in the complaint. Such matters have not yet been so determined or decided and, by reason thereof, plaintiff has not exhausted its administrative remedies.

Ninth Defense

21. The complaint seeks in this Court to attack collaterally interim and procedural decisions of the Interstate Commerce Commission in proceedings

still pending before it, and to obtain collateral review of final decisions rendered or to be rendered in such proceedings.

Tenth Defense

22. Plaintiff, by its own illegal and inequitable conduct as hereinafter alleged, is precluded from obtaining injunctive relief or damages:

(a) For many years last past, and commencing prior to 1950, plaintiff operated and continued to operate in the interstate transportation of dangerous explosives without legal authority therefor granted by the Interstate Commerce Commission. The Interstate Commerce Commission after finding and determining the unlawful nature of such operations by plaintiff, issued its order requiring plaintiff to cease and desist from such violations and from conducting operations in excess of the authority granted by plaintiff;

(b) For many years last past, and commencing prior to 1950, plaintiff has committed and continues to commit violations of the Interstate Commerce Act and of the Motor Carrier Safety Regulations promulgated by the Interstate Commerce Commission;

(c) For many years, commencing long prior to 1950, plaintiff wilfully failed and neglected to render reasonably continuous and adequate service to the public as a common carrier by motor vehicle between the points and over the routes named in its certificates of public convenience and necessity as it was required to do by Part II of the Interstate Commerce Act, but on the contrary attempted to transfer to other individuals and organizations authority to operate under color of plaintiff's certificates of public convenience and necessity in exchange for paying plaintiff a portion of the revenues derived from such operation. As a consequence of plaintiff's unlawful conduct as aforesaid, the Interstate Commerce Commission, after investigation and hearing, determined that plaintiff was acting unlawfully and ordered plaintiff to render services as required by law;

(d) For many years last past, and commencing prior to 1950, plaintiff has failed and neglected to file reports and to keep accounts, records and memoranda as required by rules, regulations and orders promulgated and issued by the Interstate Commerce Commission, has filed incorrect, untrue and incomplete reports, and has failed and neglected to make full, true and correct entries in its accounts, records and memoranda as required by such rules, regulations and orders;

(e) For many years last past, and commencing prior to 1950, plaintiff has violated and continues to violate the laws and regulations of states in and through which it operates in the interstate transportation of dangerous explosives and other freight;

(f) For many years last past, and commencing prior to 1950, plaintiff has conducted its operations with inadequate, unsafe and improper equipment, has followed unsafe and careless practices and has disregarded the safety and welfare of other users of the highways, of the communities through which plaintiff conducts its operations and of those persons who contribute as taxpayers to the maintenance and construction of the highways utilized by plaintiff in the conduct of its operations;

(g) By its repeated and continuing violations of Federal and state laws and regulations and by operating in excess of and without authority granted by the Interstate Commerce Commission, as hereinbefore in this paragraph alleged, plaintiff has sought to obtain and has obtained unfair competitive advantages over defendant railroads and other common carriers of freight;

(h) A principal purpose of plaintiff in bringing this action is to gain publicity for plaintiff's allegations, and thereby to harass and impede defendant railroads as competitors of plaintiff in the interstate transportation of dangerous explosives and other freight,

and to harass, impede and restrict defendant railroads in the exercise of lawful rights to oppose plaintiff in proceedings before the Interstate Commerce Commission and other regulatory bodies.

WHEREFORE, this defendant prays that the complaint of plaintiff be dismissed, that this defendant be awarded its costs and disbursements in this action, and that this Court grant such other and further relief as may seem just and proper in the premises.

SAMUEL E. GATES

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Executive Association - Eastern

Railroads

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Of Counsel

(CERTIFICATE OF SERVICE OMITTED)

(HEADING OMITTED) Civil Action No. 4056-54 Filed December 16, 1954

ORDER

Upon the annexed consent of the attorneys for the respective parties,
and upon motion of the attorney for the plaintiff,

IT IS ORDERED

(1) That Guy A. Thompson, as trustee in bankruptcy of New Orleans, Texas & Mexico Railway Company, a bankrupt, and Guy A. Thompson, as trustee in bankruptcy of International-Great Northern Railroad Company, a bankrupt, be made parties defendant to this action.

(2) That the action be and hereby is dismissed as against the defendants listed below without prejudice:

New Orleans, Texas & Mexico Railway Company
The Beaumont, Sour Lake & Western Railway Company
The Orange & Northwestern Railroad Company
The St. Louis, Brownsville and Mexico Railway Company
New Iberia & Northern Railroad Company
Houston and Brazos Valley Railway Company
International-Great Northern Railroad Company
San Antonio, Uvalde & Gulf Railroad Company
Sugar Land Railway Company
Rio Grande City Railway Company
Asherton and Gulf Railway Company
San Antonio Southern Railway Company
Asphalt Belt Railway Company
Iberia, St. Mary and Eastern Railroad Company
San Benito and Rio Grande Valley Railway Company
Houston North Shore Railway Company

(3) That the caption of this action shall be amended accordingly,
and that the plaintiff serve and file an amended complaint herein within twenty

days from date of signing and entry of this order. Judgment to be entered without costs.

/s/ Alexander Holtzoff
United States District Judge

Dated: December 16, 1954.

(HEADING OMITTED) Civil Action No. 4056-54 Filed January 6, 1955

AMENDMENTS TO COMPLAINT

Plaintiff, Riss & Company, Inc., by its attorneys, in accordance with the order of the Court entered December 16, 1954, making certain changes in the parties defendant to this action and requiring that plaintiff serve and file an amended complaint within twenty days, and in accordance with Rule 15(a), Federal Rules of Civil Procedure, by written consent of all defendants affected thereby, hereby amends its complaint filed herein in the following particulars:

1. Amending the caption of the action in accordance with the order of this Court dated December 16, 1954, by striking the name and address of the following defendants:

- (42) NEW ORLEANS, TEXAS & MEXICO RAILWAY COMPANY
- (43) THE BEAUMONT, SOUR LAKE & WESTERN RAILWAY COMPANY
- (44) THE ORANGE & NORTHWESTERN RAILROAD COMPANY
- (45) THE ST. LOUIS, BROWNSVILLE AND MEXICO RAILWAY COMPANY
- (46) NEW IBERIA & NORTHERN RAILROAD COMPANY
- (47) HOUSTON AND BRAZOS VALLEY RAILWAY COMPANY
- (48) INTERNATIONAL-GREAT NORTHERN RAILROAD COMPANY
- (49) SAN ANTONIO, UVALDE & GULF RAILROAD COMPANY
- (50) SUGAR LAND RAILWAY COMPANY
- (51) RIO GRANDE CITY RAILWAY COMPANY
- (52) ASHERTON AND GULF RAILWAY COMPANY
- (53) SAN ANTONIO SOUTHERN RAILWAY COMPANY
- (54) ASPHALT BELT RAILWAY COMPANY
- (55) IBERIA, ST. MARY AND EASTERN RAILROAD COMPANY
- (56) SAN BENITO AND RIO GRANDE VALLEY RAILWAY COMPANY
- (56) HOUSTON NORTH SHORE RAILWAY COMPANY

2. Amending the caption of the action in accordance with the order of this Court dated December 16, 1954, by adding the following defendants, with addresses as indicated:

- (42) Guy A. Thompson, as trustee in bankruptcy of
NEW ORLEANS, TEXAS AND MEXICO RAILWAY COMPANY,
a bankrupt,
National Press Building
14th and F Streets, N. W.
Washington 4, D. C.
- (48) Guy A. Thompson, as trustee in bankruptcy of
INTERNATIONAL-GREAT NORTHERN RAILROAD COMPANY,
a bankrupt,
National Press Building
14th and F Streets, N. W.
Washington 4, D. C.

3. Amending the caption of the action by substituting for defendant
(41) "MISSOURI PACIFIC RAILROAD COMPANY, a corporation, (Guy A.

Thompson, Trustee)", "(41) Guy A. Thompson, as trustee in bankruptcy of MISSOURI PACIFIC RAILROAD COMPANY, a bankrupt,".

4. Amending subparagraph (DD) of paragraph 8 of the complaint by striking therefrom sub-subparagraphs (3) through (7), inclusive, and sub-subparagraphs (9) through (17), inclusive, of subparagraph (DD).

5. Amending subparagraph (DD) (1) of paragraph 8 of the complaint by substituting "Guy A. Thompson, as trustee in bankruptcy of Missouri Pacific Railroad Company, a bankrupt", for "Missouri Pacific Railroad Company (Guy A. Thompson, Trustee)".

6. Amending subparagraph (DD) (2) of paragraph 8 by substituting "Guy A. Thompson, as trustee in bankruptcy of New Orleans, Texas and Mexico Railway Company, a bankrupt," for "New Orleans, Texas & Mexico Railway Company,".

7. Amending subparagraph (DD)(8) of paragraph 8 by substituting "Guy A. Thompson, as trustee in bankruptcy of International-Great Northern Railroad Company, a bankrupt," for "International-Great Northern Railroad Company,".

8. Amending the caption and subparagraph (R) of paragraph 8 with respect to defendant (27) Duluth, South Shore and Atlantic Railroad Company by striking reference to "(P. L. Solether, Trustee)".

9. Amending the caption and paragraph 6 to show the name of defendant (4) to be "Eastern Railroad Presidents Conference".

10. Amending the caption and paragraph 7 to show the name of defendant (5) as "Carl Byoir & Associates, Inc.".

11. Amending the caption to show the name of defendant (7) as "Atlantic Coast Line Railroad Company".

12. Amending the caption and subparagraph (C) (2) of paragraph 8 to show the name of defendant (9) as "Gulf, Colorado and Santa Fe Railway Company".

13. Amending the caption and subparagraph (C)(3) of paragraph 8 to show the name of defendant (10) as "Panhandle and Santa Fe Railway Company".

14. Amending the caption and subparagraph (D) of paragraph 8 to show the name of defendant (11) as "The Baltimore and Ohio Railroad Co.".

15. Amending the caption and subparagraph (E) of paragraph 8 to show the name of defendant (12) as "Boston and Maine Railroad".

16. Amending the caption and subparagraph (F) of paragraph 8 to show the name of defendant (13) as "The Central Railroad Company of New Jersey".

17. Amending the caption and subparagraph (H) of paragraph 8 to show the name of defendant (15) as "The Chesapeake and Ohio Railway Company".

18. Amending the caption and subparagraph (N) of paragraph 8 to show the name of defendant (23) as "Chicago, Rock Island and Pacific Railroad Company".

19. Amending the caption and subparagraph (Q) of paragraph 8 to show the name of defendant (26) as "The Denver and Rio Grande Western Railroad Company".

20. Amending the caption and subparagraph (W) of paragraph 8 to show the name of defendant (32) as "Gulf, Mobile and Ohio Railroad Company".

21. Amending the caption and subparagraph (AA) (2) of paragraph 8 to show the name of defendant (37) as "Kansas, Oklahoma & Gulf Railway Company".

22. Amending the caption and subparagraph (AA) (3) of paragraph 8 to show the name of defendant (38) as "Oklahoma City-Ada-Atoka Railway Company".

23. Amending the caption and subparagraph (EE) (2) of paragraph 8 to show the name of defendant (59) as "The Pittsburgh and Lake Erie Railroad Company".

24. Amending the caption and subparagraph (EE) (3) of paragraph 8 to show the name of defendant (60) as "The Chicago River and Indiana Railroad Company".

25. Amending the caption with respect to defendant (67) The Pittsburgh & West Virginia Railway Company by striking the address shown and substituting therefor "One Gateway Center, Pittsburgh, Pennsylvania".

26. Amending the caption and subparagraph (OO) of paragraph 8 to show the name of defendant (71) as "St. Louis Southwestern Railway Company".

27. Amending the caption and subparagraph (PP) (2) of paragraph 8 to show the name of defendant (73) as "Texas & New Orleans Railroad Company".

28. Amending the caption and subparagraph (UU) of paragraph 8 to show the name of defendant (78) as "Wabash Railway Company", and the caption by striking the address shown and substituting therefor "Railway Exchange Building, St. Louis 1, Missouri".

29. Amending the caption and subparagraph (XX) (2) of paragraph 8 to show the name of defendant (82) as "The Cincinnati, New Orleans and Texas Pacific Railway Company".

30. Amending the caption and subparagraph (XX) (3) of paragraph 8 to show the name of defendant (83) as "Georgia Southern and Florida Railway Company".

31. Amending the caption and subparagraph (XX) (5) of paragraph 8 to show the name of defendant (85) as "New Orleans and Northeastern Railroad Company".

/s/ A. Alvis Layne, Jr.

A. Alvis Layne, Jr.

/s/ H. Charles Ephraim

H. Charles Ephraim
Attorneys for Plaintiff
Pennsylvania Building
Washington 4, D. C.

January 5, 1955

(HEADING OMITTED) Civil Action No. 4056-54

ORDER

Upon consideration of (1) the order of the Court dated December 16, 1954, directing the addition of certain parties defendant and the dismissal of the

action without prejudice as to certain parties defendant and further directing the amendment of the complaint in accordance with such additions and dismissals; (2) plaintiff's amendments dated January 5, 1955 and filed herewith, amending the complaint in accordance with the above order and in certain other respects; and (3) the written consent of all defendants affected by the said amendments, by their attorneys, it is this 6th day of January, 1955,

ORDERED that the complaint be amended to conform with the said amendments dated January 5, 1955, and filed herewith.

/s/ R. B. KEECH
JUDGE

(CERTIFICATE OF SERVICE OMITTED)

(HEADING OMITTED) Civil Action No. 4056-54 Filed January 20, 1955

INTERROGATORIES DIRECTED TO THE DEFENDANT THE
ASSOCIATION OF WESTERN RAILWAYS

Plaintiff propounds the interrogatories which follow to the defendant The Association of Western Railways, to be answered by the said defendant, or an officer or agent thereof, under oath, within fifteen days of the service hereof, in accordance with Rule 33 of the Federal Rules of Civil Procedure. In the interrogatories which follow, the abbreviation "The A. W. R." means "The Association of Western Railways" and all other names given in response to Interrogatories 1A and 1B. In the interrogatories which follow whenever reference is made to the "principal personnel" of The Association of Western Railways, reference is to the following persons:

D. P. Loomis, Chairman
J. F. Blair, General Manager
R. F. Welsh, Executive Secretary

P. G. Otterback, Secretary
A. F. Hucksold, Auditor
W. R. Nugent, Assistant Auditor

LAW DEPARTMENT

J. H. Hays, Counsel
A. M. Mathews, Attorney
J. W. Nisbet, Attorney
Ed White, Attorney
J. D. Feeney, Attorney
C. K. Smith, Research Engineer
Frank E. Haas, Special Representative

PUBLIC RELATIONS DEPARTMENT

H. M. Sims, Director
P. D. Shoemaker, Assistant to
Director
J. G. Pate, Assistant to
Director
A. M. Rung, Assistant to
Director
W. W. Abbey, Assistant to Director

1.
 - A. State whether "The Association of Western Railways" is the present name of The A. W. R. If not, state the present name.
 - B. Has The A. W. R. ever been known by any name other than "The Association of Western Railways" or the name stated in response to Interrogatory 1.A. ? If so, give all other names by which The A. W. R. has been known and, with respect to each, state the period or periods when it was known by such name.
 - C. On what date was The A. W. R. organized?
 - D. Give all predecessor organizations to The A. W. R.
 - E. Did The A. W. R. immediately succeed any of the organizations named in response to Interrogatory 1.D. ? If so, give the name of the organizations succeeded and state whether that organization ceased to exist upon the organization of The A. W. R.
 - F. State who organized The A. W. R. , including with respect to each individual named his affiliation, if any, with a railroad, naming the railroad and giving his title or position with the railroad.
 - G. For what reasons was The A. W. R. organized?
2. Has The A. W. R. ever had in writing any charter, by-laws, constitution, articles, plan of organization or statement of organization or purposes? If so, state with respect to each such document:
 - (a) its title or description and its date, if any;
 - (b) when it was adopted by the members;
 - (c) whether there is a copy in the possession, custody or control of The A. W. R. ; and

- (d) whether the document is still in effect and, if not, the date its effectiveness was terminated and whether such termination was by the members.

3. The following interrogatories should be answered as they would have been answered on September 21, 1954:

- A. What are the purposes of The A. W. R. ?
- B. What are the qualifications for membership in The A. W. R. ?
- C. Who are members of The A. W. R. ? (Give names).
- D. Give the name of each member of The A. W. R. which is not a member of the Western Traffic Association or of one of its sub-organizations.
- E. Since January 1, 1954, describe the services, if any, performed by members, their officers, employees or agents, for The A. W. R. With respect to the services performed, state whether there has been any payment or reimbursement from funds of The A. W. R. for expenses incurred in the performance of such services.
- F. Does The A. W. R. derive funds from its members? If so, state the following:
 - (1) Whether by payment of dues, assessments, or in some other manner;
 - (2) How the amount to be paid by each member is determined;
 - (3) When the amount to be paid by each member is determined;
 - (4) By whom the amount to be paid by each member is determined; and
 - (5) When the amount is to be paid by each member and how often each member is to make a payment.
- G. Since January 1, 1950 has The A. W. R. received monies from any source other than its members? If so, identify each source by name and with respect to each source state when monies were received, the total amount received from the source, and the purposes or services for which payments were received.

H. Is there any board of directors or executive committee of The A.W.R.? If so:

- (1) What is its name?
- (2) Who are members of this board or committee? (Give name, business address, and railroad affiliation, if any, including the name of the railroad and the title or position with the railroad.)
- (3) How, when, and by whom were the members selected?
- (4) For what term does each member serve?
- (5) What is the function of this board or committee?
- (6) What are the duties of each member of this board or committee?
- (7) Does this board or committee, or any member or members thereof, have any authority to establish the policy of, to determine activities to be undertaken by or in behalf of, or to determine when funds are to be expended by The A.W.R.? If yes, state with respect to which of these the board or committee, its member or members, has authority, describe the scope of the authority, and state who has the authority described.

I. Are there any officers of The A.W.R.? If so:

- (1) Give the name of each officer, his title or position, his business and home address and his railroad affiliation, if any, including the name of the railroad and the title or position he holds with the railroad.
- (2) How, when and by whom were the officers selected?
- (3) For what term does each officer serve?
- (4) State the functions, duties, and responsibilities of each officer.
- (5) Do the officers or any of them have authority to establish policy of, to determine activities to be undertaken by or

in behalf of, or to determine when funds are to be expended by The A.W.R. ? If yes, state with respect to which of these the officers have authority, describe the scope of the authority, and state who has the authority described.

J. What are the departments, committees, and other subdivisions of The A.W.R. ? In answering, give the name of each department, committee, or other subdivision and with respect to each:

- (1) Give the name of each member, employee and agent and state with respect to each his railroad affiliation, if any, including the name of the railroad and his title or position with the railroad;
- (2) State the function of the department, committee or other subdivision in the organization and program of The A.W.R.; and
- (3) Describe the activities of such department, committee or other subdivision.

K. State with respect to the allocation of the funds of The A.W.R., the following:

- (1) How these funds are allocated to the activities of The A.W.R., its departments, committees, and other subdivisions;
- (2) By whom such allocations are made;
- (3) Whether such allocations are made as a part of a budget and, if so, whether and when such budget is submitted to the members;
- (4) Whether such allocation covers disbursements to be made for a period of time and, if so, for what period of time.

L. What person, or group of persons, is responsible for determining what activities will be undertaken by, or in behalf of, The A.W.R., its departments, committees, and other subdivisions? In

answering, indicate name or names, titles or positions, and if different persons for different types of activities, indicate the persons for each type of activity.

- M. With respect to each meeting held since January 1, 1950 of the members, board of directors (or other group stated in response to Interrogatory 3.H), officers, principal personnel, departments, committees and other subdivisions of The A.W.R., give the date and location, state whether minutes or a report of the meeting were made, and, if so, state whether there is a copy of such report or minutes in the possession, custody or control of The A.W.R.
- N. Does The A.W.R. maintain any bank accounts? If so, state with respect to each such bank account, the type of account, the bank (its name and location), the name in which the account is maintained, and the names of all persons authorized to write checks upon or otherwise to draw money from the account.
- O. How many persons are employed by The A.W.R.?
- P. Are all the principal personnel of The A.W.R. full-time employees of The A.W.R.? If not, state which are full-time employees and state which are part-time employees, and with respect to each of the latter, state the average number of hours per week worked for The A.W.R. for the first nine months of 1954 and the names of all other employers, if any.
- Q. Describe the duties and responsibilities of each of the principal personnel of The A.W.R.
- R. Give the address of all offices maintained by The A.W.R.
- S. Give the address of all offices maintained by the Western Traffic Association and each of its sub-organizations and state with respect to each such office whether it is maintained in common with The A.W.R., whether there are employees of The A.W.R. in the office, and whether there is any personal property of The A.W.R. in the office.

- T. State for each year 1950 to 1953, inclusive, and for the period in 1954 to September 21, 1954, the total income of The A.W.R.
 - U. State for each year 1950 to 1953, inclusive, and for the period in 1954 to September 21, 1954, the total amount of the expenditures of the A.W.R.
 - V. State whether, since January 1, 1950, The A.W.R. has paid any money from its funds to any unincorporated association whose members are railroads, railroad officers or employees. If so, with respect to each such association to whom a payment has been made:
 - (1) Give the name of the association;
 - (2) Give the address of its principal place of business or the address of the office at which payment was made;
 - (3) Give the date and amount of each payment made;
 - (4) State the purpose or the services for which payment was made.
- 4.
- A. On what date did The A.W.R. combine with or merge with the Western Association of Railway Executives?
 - B. Describe what occurred.
 - C. Did the Western Association of Railway Executives cease to exist after such combination or merger?
 - D. What, if any, changes in The A.W.R. resulted from the combination or merger?
 - E. Why did such combination or merger take place?
 - F. Were the purposes and activities of The A.W.R. any different after the combination or merger than the purposes and activities of the Western Association of Railway Executives immediately before the combination or merger? If so, state how they differed.
 - G. State whether there was any understanding or agreement made in writing with respect to this combination or merger and, if so, describe the document, give its date, and state whether there is a copy of it in the possession, custody or control of The A.W.R.

5. Excepting only the combination or merger covered by Interrogatory 4, has The A.W.R. ever consolidated with, merged with, combined with, or otherwise taken over any function of any other organization? If so,
- (a) State the name of the organization or organizations involved;
 - (b) With respect to each other organization involved, state whether it ceased to exist;
 - (c) Describe what occurred;
 - (d) Give the date of each such occurrence;
 - (e) State what, if any, changes in The A.W.R. resulted from each such occurrence;
 - (f) State whether there was any understanding or agreement in writing with respect to each such occurrence and, if so, describe it, give its date, and state whether there is a copy of it in the possession, custody or control of The A.W.R.
6. A. State which, if any, of the activities now carried on by the Western Traffic Association and its sub-organizations have ever been carried on by, or in behalf of, The A.W.R. for its members.
- B. With respect to each activity stated in answer to Interrogatory 6.A. to have been carried on by, or in behalf of, The A.W.R., give the periods when the activity was carried on.
7. Since it was first organized, has The A.W.R. turned over any of its functions or activities to any other organization or organizations? If so, state as to each such instance:
- (a) What functions or activities were turned over;
 - (b) The name of each organization involved;
 - (c) The date of occurrence;
 - (d) Whether there was any written understanding or agreement with respect to such turning over of functions or activities. If so, describe the document, give its date, and state whether there is a copy of it in the possession, custody or control of The A.W.R.

8. A. On what date was The A.W.R. designated as the agency to maintain the funds and accounts of each of the sub-organizations of the Western Traffic Association?
- B. By whom was The A.W.R. designated as the agency to maintain the funds and accounts of each of the sub-organizations of the Western Traffic Association?
- C. Was the designation of The A.W. R. as the agency to maintain the funds and accounts of each of the sub-organizations of the Western Traffic Association in writing? If so, describe the document, give its date, and state whether there is a copy of it in the possession, custody or control of The A.W.R.
- D. Was The A.W.R. designated as the agency to maintain the funds and accounts of each of the sub-organizations of the Western Traffic Association pursuant to the articles of agreement of the Western Traffic Association as approved by the Interstate Commerce Commission in a report appearing at 276 I.C.C. 183? If so, under what article of agreement was that designation made?
- E. Was the designation of The A.W.R. as the agency to maintain the funds and accounts of each of the sub-organizations of Western Traffic Association ever reported to the Interstate Commerce Commission? If so, give the date when reported, state whether such designation has ever been approved by the Interstate Commerce Commission, and state whether there is a copy of the report in the possession, custody or control of The A.W.R.
- F. Who is responsible in the A.W.R. for maintaining the funds and accounts of the Western Traffic Association and of each of its sub-organizations? If one person, give his name, title or position in the A.W.R., and address. If more than one person, give the name, title or position in the A.W.R., address, and a description of the responsibility of each.

- G. Since January 1, 1950 has The A.W.R., or has any officer or employee of The A.W.R. received any compensation from the Western Traffic Association or any of its sub-organizations for maintaining the funds and accounts of the Western Traffic Association and its sub-organizations? If so, with respect to each receipt, state the date, the amount, and the name of the recipient.
9. State the name of each source from which The A.W.R. collected funds of the Western Traffic Association and its sub-organizations since January 1, 1954, indicating with respect to each source which was a member of the Western Traffic Association at the time of the receipt, whether any receipt included any amount for funds of The A.W.R.
10. State the names of all banks in which, since January 1, 1954 the funds of the Western Traffic Association collected by The A.W.R. have been maintained, and give with respect to each bank and each bank account, the type of account, the bank (its name and location), the name in which the account has been maintained, and the names of all persons authorized to write checks upon or otherwise to draw money from the account. If the bank account is not now maintained, so indicate, and indicate the period during which maintained.
11. With respect to the office maintained in the Sheraton Building, 711 - 14th Street, Northwest, Washington, D. C., under the name Western Traffic Association -- Executive Committee, state the following:
- (a) The name of the lessee, the name of each person who signed the lease, and the date and term of the lease;
 - (b) The name of the person or persons who in 1954 signed checks for or otherwise made payments under the lease;
 - (c) The name, home address and title or position of each person in the office;
 - (d) The number of times during 1954 any person in this office wrote a letter to one of the principal personnel of The A.W.R.;

- (e) The number of times during 1954 any person from this office met with one or more of the principal personnel of The A.W.R. and how many of these meetings were in the District of Columbia;
 - (f) The number of times during 1954 one or more of the principal personnel of The A.W.R. visited this office;
 - (g) The number of times during 1954 one of the principal personnel of The A.W.R. wrote a letter to any person in this office;
 - (h) Whether, since January 1, 1954, any person in this office has received any money from funds of The A.W.R., by check or otherwise.
12. Since January 1, 1954, has any officer, employee, or agent of The A.W.R., including the principal personnel of The A.W.R., performed any service (other than maintaining funds and accounts) for or in behalf of the Western Traffic Association -- or any of its sub-organizations? If so, with respect to each such instance:
- (a) State the name of the person or persons involved;
 - (b) Give the date or dates of such work;
 - (c) Describe the work done;
 - (d) State the place or places where the work was done; and
 - (e) State whether the person or persons were ever paid for such work from funds of the Western Traffic Association or any of its sub-organizations.
13. Give the names of all persons from whom instructions were received in 1954 by The A.W.R. as to the collection and disbursement of funds of the Western Traffic Association and its sub-organizations and with respect to each person named state for whose funds the instructions were given and whether covering collections or disbursements or both.
14. Does The A.W.R. nominate or elect any directors of the Association of American Railroads? If so, state:

- (a) Whether The A.W.R. nominates or elects such directors;
 - (b) How many directors are involved;
 - (c) When such nominations or elections take place;
 - (d) Where such nominations or elections take place; and
 - (e) Whether those directors are nominated and elected to represent the interests of the members of The A.W.R.
15. Aside from the answers to Interrogatory 14, has The A.W.R., its board of directors or executive committee, its departments, committees or other subdivisions, or its officers, employees or agents (including its principal personnel), since January 1, 1950, performed any services for the Association of American railroads? If so, describe the services performed, and with respect to each type of services performed, state:
- A. By whom the services were performed.
 - B. When and where the services were performed.
 - C. Whether there was any payment made by the Association of American Railroads for the performance of the services.
16. Has the Association of American Railroads since January 1, 1950, performed any services for the Association of Western Railways, its board of directors or executive committee, its departments, committees or other subdivisions, or its officers, employees or agents? If so, describe the services performed and state with respect to each type of services performed:
- A. By whom the services were performed.
 - B. When and where the services were performed.
 - C. Whether there was any payment from funds of the A.W.R. for the services performed.
17. Excluding the Western Traffic Association and its sub-organizations, state whether The A.W.R., its board of directors or executive committee, departments, committees or other subdivisions, or its officers, employees or agents (including its principal personnel) has at any time since January 1, 1950, collected the funds of, expended the funds of, or

maintained the accounts of any unincorporated associations? If so, with respect to each such unincorporated association:

- A. Give the name of the association.
 - B. State whether what was done was the collecting of funds, expending of funds, or maintaining of accounts.
 - C. State by whom connected with The A.W.R. the services stated in answer to Interrogatory 17.B. were performed and the period during which these services were performed.
 - D. If funds of the association were collected, state whether they were collected as a part of monies collected for The A.W.R. funds.
 - E. State whether the association has ever compensated The A.W.R. or the persons performing the services and, if so, give the date and amount of each payment and the name of the recipient, and
 - F. State whether there is in writing any agreement or understanding as to the services to be performed and, if so, describe the document, give its date, and state whether there is a copy of it in the possession, custody or control of The A.W.R.
18. Have any monies of The A.W.R. ever been deposited in a bank in the District of Columbia? If so, state when, give the name of the bank or banks, the type of account or accounts, the name in which the account was maintained, and the name of the person or persons authorized to write checks upon or otherwise draw from the account.
19. A. Has The A.W.R., any of its departments, committees, or other subdivisions, or any person or group of persons acting in behalf of The A.W.R., ever owned, rented, had an interest in, or arrangement for the use of:
- (1) Any office, office space, or any other business space in the District of Columbia?
 - (2) Any living quarters in the District of Columbia?
 - (3) Any hotel room or rooms in the District of Columbia rented or leased for a period of one month or longer?

- B. Furnish details as to each affirmative answer to Interrogatories 19. A(1) through (3), inclusive, including the location of the premises, the dates maintained, the name in which maintained, and the purposes for which maintained.
20. Has any officer, employee, director (or member of the executive committee), or agent of The A.W.R. (including the principal personnel of the A.W.R.), been in the District of Columbia on business of The A.W.R. at any time since January 1, 1950? If so, state, as to each such person, his name, title or position, and the date or dates and purpose of each visit.
21. A. Furnish details as to all payments from funds of The A.W.R. since January 1, 1950, made in the District of Columbia (including checks or money sent to an address in the District of Columbia from outside) to persons and organizations, including with respect to each payment the amount and date paid, the name and address of the recipient at the time of payment, and the purposes or services for which paid.
- B. Excepting details furnished in response to Interrogatory 21. A, furnish details as to all payments from funds of The A.W.R. since January 1, 1950 made to persons (excluding officers, employees, and agents of The A.W.R.) and organizations for services in any part performed in the District of Columbia, including with respect to each payment, the amount and date paid, the name and address of the recipient at the time of payment, the services for which paid, and the services performed in the District of Columbia.
22. Has The A.W.R., or anyone in its behalf, at any time since January 1, 1950, done research for, prepared, published, or distributed in the District of Columbia, or contributed to the cost of research for, or preparation, publication, or distribution in the District of Columbia, of films, articles, press releases, or other publications? If so, state as to each film, article, release, or other publication, the following:

- (a) Its nature and content;
- (b) Where copies may be obtained;
- (c) Which of the activities (research, preparation, publication, or distribution) took place in the District of Columbia;
- (d) The name and address of the persons and organizations who participated in the District of Columbia in such research, preparation, publication, or distribution, and the activities of each in this connection;
- (e) The activities of, or in behalf of, The A.W.R. relating to it;
- (f) If funds of The A.W.R. were expended, the amount of each payment, the date paid, to whom paid, and for what paid.

23. Has The A.W.R., or anyone in its behalf, at any time since January 1, 1950, organized, participated in the organizations of, or contributed to the cost of organizing any corporation or association chartered in, licensed in, or having an office in the District of Columbia? If so, state the following as to each such corporation and each such association:

- (a) Its name and address;
- (b) The nature of its business and activities;
- (c) When it was organized;
- (d) The purposes for which The A.W.R. organized it, participated in its organization, or contributed to the cost of its organization;
- (e) The functions it now performs on behalf of The A.W.R., if any;
- (f) The name and title or position of each officer, director, employee, or agent of The A.W.R. who participated in its organization.
- (g) If funds of The A.W.R. were expended, the amount of each payment, the date paid, to whom paid, and for what paid.

24. Has anyone in behalf of The A.W.R., any of its departments, committees, or other subdivisions, at any time since January 1, 1950, engaged in any activities aimed at the enactment or defeat of legislation by the Congress of the United States or participated in any hearings of any committee of the Congress of the United States? If so:
- (a) State the name, address, and title or position of each person engaging in such activities;
 - (b) Give all dates on which each person engaged in such activities, state where such activities took place, and describe the activities which took place.
25. Have any of the principal personnel of The A.W.R. ever filed a registration under the Federal Lobbying Act (Public Law 601, 79th Congress of the United States)? If so, state with respect to each such person:
- (a) His name;
 - (b) The date of his registration;
 - (c) The name of the person or persons, organization, or organizations, listed by him on his registration as the ones in whose interest he appears or works;
 - (d) Whether there is a copy of such registration in the possession, custody or control of The A.W.R., and, if not, the name and address of a person in possession, custody or control of a copy of the registration.
26. Has any report required under the Federal Lobbying Act (Public Law 601, 79th Congress of the United States) ever been filed by The A.W.R. or by any of the principal personnel of The A.W.R. showing on the report The A.W.R. as his employer? If so, state with respect to each such report filed:
- (a) Its date and the period covered by the report;
 - (b) Whether the report was filed by The A.W.R. or by one of its principal personnel;
 - (c) The person who signed the report;

- (d) Whether there is a copy of the report in the possession, custody or control of The A.W.R., and if not, the name and address of a person in possession, custody or control of a copy of the report.
27. Since January 1, 1950, has there ever been prepared in writing a statement of income and expenses or a balance sheet or any other type of financial statement regarding the operations of The A.W.R. for any period of time? If so, describe the document, including its date, and state whether there is a copy of it in the possession, custody or control of The A.W.R.
28. Since January 1, 1950, has there ever been prepared in writing a statement of income and expenses, a balance sheet, or any other type of financial statement regarding the operations of the Western Traffic Association or any of its sub-organizations for any period of time? If so, describe the document, including its date, and state whether there is a copy of it in the possession, custody or control of The A.W.R.
29. Does The A.W.R. own, lease, or have any interest in any railroad car? If so, state the types and number of cars of each type, the interest of The A.W.R. in each car, and the number of times each car has been in the District of Columbia since January 1, 1954.
30. Since January 1, 1950, has any railroad car been made available for use by The A.W.R., its officers, employees, or agents? If so, state with respect to each such car, its type, to whom and by whom it was made available, the dates when it was made available, and the dates when the car has been in the District of Columbia since January 1, 1954.
31. Give the location of every place where there are files of The A.W.R., its board of directors (or executive committee), its departments, committees, other subdivisions, or its officers, employees, agents (including its principal personnel) containing correspondence, memoranda, reports, records, statements or any other documents. With respect to each place where such files are located:

- (a) State whose files are located there;
- (b) Describe the types of documents in the files located there;
- (c) Describe the organization of the files located there;
- (d) State the number of people engaged in filing there and give the name and home address of each such person;
- (e) State how many file drawers, file cases, or other types of containers of files are located there;
- (f) State whether the files there are in storage or are in use; and
- (g) State whether the files there are in the possession, custody, or control of The A. W. R. and if not give the name of the person or persons having possession, custody or control of the files there.

32. Excepting the nomination or election of directors of the Association of American Railroads, has The A.W.R., or any of its departments, committees or other subdivisions, since January 1, 1954, nominated, recommended, selected, or participated in the nomination, recommendation or selection of any officer, director, employee, or member of any committee of any association of railroads, railroad officers, or railroad employees? If so, with respect to each instance:

- (1) Give the name, business address and railroad affiliation, if any, of the person involved, including his title or position and the name of the railroad with which affiliated;
- (2) Give the name of the association involved;
- (3) Describe the position for which the person involved was nominated, recommended or selected and state whether the person involved obtained the position; and
- (4) Describe the role of The A. W. R. and state the date of its action.

33. Is any member of the board of directors (or executive committee), department, committee or other subdivision, or any officer, employee or agent (including the principal personnel) of The A. W. R. also a director,

officer, employee or member of any committee of any association of railroad, railroad officers or employees (other than The A.W.R.)?

If so, state as to each such person:

- (1) His name, title or position with The A.W.R.;
- (2) The name of the other association or associations involved and his title or position with each such association;
- (3) With respect to each title or position he holds with any other such association, whether he was nominated or selected by, represents, or holds such position by virtue of his title or position with, The A.W.R.

34. Has The A.W.R. at any time since January 1, 1950, or for any period since January 1, 1950, filed any return on, paid, or made any application for exemption from any tax levied by state (including the District of Columbia), or federal authority? If so, as to each such return, payment, or application, give its date, the period covered, the type of tax involved, and where filed, or paid; and state whether there is a copy of the return, application, or record of payment in the possession, custody or control of The A.W.R.

Layne and Ephraim

(Signatures omitted)

Attorneys for Plaintiff,
Riss & Company, Inc.
Pennsylvania Building
Washington 4, D. C.

(CERTIFICATE OF SERVICE OMITTED)

(HEADING OMITTED) Civil Action No. 4056-54 Filed January 31, 1955

OBJECTION TO PLAINTIFF'S INTERROGATORIES

Defendant, The Association of Western Railways, objects to interrogatories numbered 1B through 1G, 2, 3A, 3B, 3E through 3V, 4, 5, 6, 7, 9, 10, 11(d) through 11(g), 12, 13, 14, 15, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28,

31, 32, 33, and 34, served by the plaintiff on January 20, 1955, on the following grounds:

1. The interrogatories to which defendant objects are general discovery interrogatories covering all aspects of the complaint and are not directed to the issues raised by defendant's pending motions to quash service of summons and to dismiss for improper venue.

2. The defendant has moved this Court to quash the return of the service of summons in this action on this defendant, and to dismiss this action as to it for lack of venue. Said motion is now pending before this Court. Defendant should not be required to expend time or sustain other burdens with respect to matters asserted in the complaint to which defendant is not presently answerable in this Court.

3. The parties have stipulated that the plaintiff's time to reply to said motion to quash and dismiss shall be extended to thirty days from the date of receiving the answers to these interrogatories. It is therefore apparent that the sole proper purpose of interrogatories at this time is to be in aid of such reply.

4. Defendant is an "adverse party" within the meaning of Rule 33, Federal Rules of Civil Procedure, only to the extent of the questions raised by its motions and affidavits.

5. The interrogatories set forth above call for information which is irrelevant to any issue now before this Court under the motions to quash and to dismiss, and represent an attempt to inquire into the issues of the case as a whole prior to the determination of the issues raised by defendant's motions.

Dated: January 31, 1955.

(Signatures Omitted)

(HEADING OMITTED) Civil Action No. 4056-54 Filed January 31, 1955

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT
OF OBJECTIONS TO PLAINTIFF'S IN-
TERROGATORIES

I.

This is an action for an injunction and damages under the antitrust laws filed by a private party. The defendants are numerous railroads and

several railroad associations.

The Association of Western Railways is an unincorporated association having its principal and only offices in Chicago, Illinois. The Association of Western Railways has filed motions pursuant to Rule 12, Federal Rules of Civil Procedure, and supporting affidavits, with this Court challenging the propriety of service and venue. These motions are now pending before this Court. Copies of the motions, affidavits, and memorandum are annexed hereto for the convenience of the Court.

The sole issue raised by the motion to quash is whether or not Western Traffic Association is so related to The Association of Western Railways that service upon it constitutes service upon the Association (i. e., whether Western Traffic Association is a division or agent of The Association of Western Railways).

The issues raised by the motion to dismiss are whether The Association of Western Railways is "found" or has an agent in the District of Columbia. The complaint appears to concede that the Association does not "reside" there.

Rule 33, Federal Rules of Civil Procedure, permits a party to serve written interrogatories upon any "adverse party." Such interrogatories may relate to any matters which can be inquired into under Rule 26(b), governing depositions. The rule provides for the filing of objections, and permits the Court to enter such order as justice may require.

In some early decisions, courts ruled that where one named as a defendant in an action had challenged the jurisdiction of the Court, it was not an "adverse party" within Rule 33, and could not be required to answer interrogatories. E. g., Tradersmens National Bank & Trust Co. v. Charlton Steam Shipping Co., Ltd., 3 F.R.D. 363 (E.D. Pa. 1944). And, in a case arising under Rule 26, the District Court for the Eastern District of Oklahoma refused to permit a party to take depositions on jurisdictional issues. Fox v. House, 29 F. Supp. 673 (1939).

The more generally accepted practice permits the use of discovery proceedings when the jurisdiction of the Court is challenged, but limits the

discovery to issues raised by the pending motions. 4 MOORE'S FEDERAL PRACTICE 1046-1047, 2302-2303 (1950); Urquhart v. American-LaFrance Foamite Corporation, 144 F.2d 542 (CA DC 1944); Blair Holdings Corp. v. Rubenstein, 122 F. Supp. 602 (S.D.N.Y. 1954); Jiffy Lubricator Co. v. Alemite Co., 28 F. Supp. 385 (D.N.D. 1939); Burroughs v. Warner Bros. Pictures, Inc., 15 F.R. Serv. 33.326, Case 1 (D. Mass. 1951); Boone v. Southern Ry. Co., 9 F.R.D. 60 (E.D. Pa. 1949); Silk v. Sieling, 7 F.R.D. 576 (E.D. Pa. 1947); Goudy v. American Petroleum Transport Corp., Stillman v. Parry Navigation Co., Inc., 10 F.R. Serv. 33.326, Case 1 (E.D. Pa. 1947); Savage v. Isthmian Steamship Co., 9 F.R. Serv. 26a.12, Case 1 (E.D. Pa. 1946). [Since the permissible scope of written interrogatories is coextensive with that of depositions, cases ruling on either are equally applicable to the question at hand. See Rule 33, F.R. Civ. P. 1 4 MOORE'S FEDERAL PRACTICE 2289-2291 (1950); Commentary, 15 F.R. Serv. 979, 982 (1946).]

We do not find a single decision permitting interrogatories which go beyond the jurisdictional questions. To permit a plaintiff to demand information concerning all matters covered by the complaint prior to the determination of the questions raised by motions such as those filed by this defendant would be a patent abuse of the discovery procedures of the Federal Rules of Civil Procedure.

II

Defendant (hereinafter referred to as "the A.W.R.") does not object to several of the interrogatories propounded, even though in some instances they merely call for a repetition of facts already stated in the affidavits, or are broad and general in form. Defendants are therefore preparing and will file answers to Interrogatories Nos. 1A, 3C, 3D, 8, 11(a), 11(b), 11(c), 16, 18, 29, and 30.

Even a cursory examination of the remaining interrogatories to which defendant objects will disclose that they go far beyond the issues presently before the Court under defendant's motion to quash and to dismiss, and call for information which is irrelevant to the present inquiry. To facilitate the Court's examination, however, the information requested by each interrogatory to which the defendant objects is summarized and discussed herein:

1. Interrogatories Nos. 1B through 1G, 2, 4, 5, 6, and 7 request extensive details as to the history of the organization of the A.W.R., without any limitation as to time or as to the place where these matters took place. These questions cannot by any stretch of the imagination relate to the issues as to whether the A.W.R. on September 22, 1954, had an agent in the District and was doing business in the District. On the other hand, the plaintiff is obviously seeking facts to bolster its charges of conspiracy. The information requested is thus irrelevant to the only issues now before the Court, and the purpose of the plaintiff in attempting to secure information to aid its case in chief before the A.W.R. is dismissed out of the case is obvious.

2. Interrogatories Nos. 3A, 3B, 3H, 3I, 3J, 3L, 3O, 3P, and 3Q request information concerning the "progress" of the A.W.R. and concerning its internal organization and operation. The same comments apply. The information is irrelevant to the only issues now before the Court, and is sought for obvious purposes which are clearly improper.

3. Interrogatory No. 3E requests information as to the activities of the members of the A.W.R. The irrelevance of such interrogatories to the issues of service and venue by the rule that the place or nature of the activities of the members of an association are not to be considered in determining where the association is to be found: Sperry Products, Inc. v. Assn. of Amer. Railroads, 132 F.2d 408 (CA 2, 1942), cert. den. 319 U.S. 744.

4. Interrogatories Nos. 3F, 3G, 3K, 3T, 3U, 3V, 27, and 28 request information as to the financial structure and financial history of the A.W.R. Two of these interrogatories are not limited in time (e.g., 3F and 3K), and the others extend backward over a period of several years (e.g., 3G, 3T, 3U, 3V, 27, and 28). Thus, both the scope of the interrogatories and their subject matter demonstrate their irrelevance. Again, the obvious purpose of plaintiff in asking them is to obtain information to which it is not entitled bearing on the alleged conspiracy.

5. Interrogatory No. 3M asks about all meetings of the A.W.R., whenever held, which have taken place since January 1, 1950, and what minutes

have been recorded. The absence of any limitation as to place, and the extent of the five-year period covered, clearly demonstrate that plaintiff is seeking leads to possible evidence of the supposed conspiracy, and is in no way concerned with whether the A.W.R. on September 22, 1954, was doing business in the District or had an agent therein.

6. Interrogatories Nos. 3N and 10 ask for information about all of the bank accounts maintained by A.W.R. and about all of the bank accounts of the Western Traffic Association -- no matter where such bank accounts are located. Information is also requested as to the names of all persons authorized to draw on these accounts. Whatever the relevance of such sweeping questions may be to the sweeping allegations of the complaint, any information about possible bank accounts in Kalamazoo or Walla Walla could never assist this Court in deciding whether the A.W.R. was doing business or had an agent in the District.

7. Interrogatories Nos. 3R and 3S ask for the addresses of all offices of the A.W.R. and of the Western Traffic Association, wherever located. Whether or not the A.W.R. and the Western Traffic Association may or may not share office space in Kansas City, Missouri, is obviously irrelevant to the issue as to whether the Western Traffic Association acts in the District as an agent for the A.W.R.

8. Interrogatories Nos. 9 and 13 ask for extensive information as to the sources of the funds collected by the A.W.R. for the Western Traffic Association and the persons wherever located and by whomever employed from whom the A.W.R. received any instructions relating to collection or disbursement of such funds in 1954. The breadth of these inquiries emphasizes their irrelevance to the only issues now before the Court, and at the same time evidence the entirely extraneous and improper purpose for which they are being asked.

9. Interrogatories Nos. 11(d), 11(e), 11(f), and 11(g) ask for the number of times in which any employee in the A.W.R. talked to any employee in the Washington office of the Western Traffic Association, or wrote a letter to such an employee, or received a letter from such an employee, or visited the

office of the Western Traffic Association. The fact that such contacts might have occurred, and the number of such contacts, are not, of course, any evidence whatsoever that the Western Traffic Association was the agent of the A.W.R.

10. Interrogatory No. 12 asks for facts which might at most demonstrate that the A.W. R. was in some sense an agent of the Western Traffic Association to a greater extent than admitted by the affidavits filed with the motions to quash and to dismiss. However, the claim of the plaintiff is exactly the reverse -- that the latter was the agent of the former.

11. Interrogatories Nos. 14, 32, and 33 request extensive information as to possible relationships between the A.W.R. and the officers and directors of the Association of American Railroads and "any association of railroads, railroad officers or railroad employees," wherever located. These questions are obviously intended solely to elicit possible information relating to the alleged "conspiracy," and have nothing to do with the issues of service and venue.

12. Interrogatory No. 15 asks whether the A.W.R. has ever performed any services for the Association of American Railroads at any place at any time within the past five years, and what those services were. Even if the A.W.R. had at some time somewhere served as an agent for the Association of American Railroads, that would not demonstrate in any way that the A.W.R. was doing business in the District or that it had an agent there.

13. Interrogatory No. 17 asks whether the A.W.R. has ever done for other associations what it has done for the Western Traffic Association (i. e., collected and disbursed funds). The question covers a five-year period and is unlimited as to place. It is completely irrelevant to the issues of service or venue.

14. Interrogatory No. 19 asks, without any limitation as to time whatsoever, whether the A.W.R. has ever leased any office, living quarters, or hotel rooms in the District. What may have happened years ago has nothing to do with the status of the A.W.R. on September 22, 1954, or today.

15. Interrogatories Nos. 20, 21, 22, and 23 inquire whether the A.W.R., at any time whatsoever in the past five years, has had any employee

visit the District, has paid any money to anyone in the District, has had anyone in the District do any research, or prepare or distribute press releases or publications of any kind in the District, or had contributed to the organization of any corporation or association in the District. The period of time covered -- all of the five years since January 1, 1950 -- is enough in itself to demonstrate the irrelevance of the information sought to the status of the A.W.R. on September 22, 1954. Furthermore, the activities themselves could not constitute the doing of business.

16. Interrogatories Nos. 24, 25, and 26 ask whether any representative of the A.W.R. has, at any time in the past five years, engaged in any lobbying activities before Congress, been registered under the Federal Lobbying Act or filed any report. Such activities, if they existed, would not constitute the doing of business; the place of such activities is not limited to the District; and the period of time covered is obviously unrelated to the immediate issues.

17. Interrogatory No. 31 asks for every location where files of the A. W. R. may be located, the number of file cases, the names of those handling the files, and extensive related evidence. Obviously, the plaintiff is preparing to engage in an extensive fishing expedition to seek possible evidence to support its allegations. Plaintiff's interest in trying to obtain this information before the A. W. R. is dismissed from the case is obvious; but to ask the aid of this Court in procuring it before the defendant is dismissed is highly improper.

18. Interrogatory No. 34 asks whether the A. W. R. at any time in the past five years has made any tax return or requested any tax exemption, not only of the federal government but of any state whatsoever. The interrogatory also wants to know if the files of the A. W. R. contain copies of such returns or requests. The privileged nature of these returns merely emphasizes the inherent impropriety of the entire interrogatory.

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This brief review of the scope and character of plaintiff's interrogatories demonstrates, we submit, that plaintiff is trying to fish for evidence to support its allegations of a supposed conspiracy before this defendant, the A. W. R., is dismissed from the case.

To sustain these interrogatories would be to open the door for shocking abuses of the discovery process. All that a plaintiff would have to do would be to name as defendant any potential source of evidence, make a pretended service upon it, and then force the production of all pertinent information before the formalities of a quashing of service or dismissal for want of venue could be completed. The Rules were never intended to be used in this way as an instrument of oppression.

The plaintiff has an orderly procedure which it can follow to get any information to which it is legally entitled from the A. W. R. It can await the determination of the issues raised by the motions to quash and to dismiss. If they are resolved in plaintiff's favor, it can resort to discovery in accordance with the rules. If they are resolved, as we submit they should be resolved, in favor of the defendant, then plaintiff can come to the appropriate district and take oral depositions or engage in other appropriate discovery.

But the one thing which plaintiff has no right to do is the very thing which plaintiff is attempting to do.

We submit that the challenged interrogatories are entirely improper, and that defendant's objections should be sustained.

Respectfully submitted,

Dated: January 31, 1955. (Signatures omitted)

SIDLEY, AUSTIN, BURGESS
& SMITH

11 South LaSalle Street
Chicago 3, Illinois

Of Counsel

(HEADING OMITTED) Civil Action No. 4056-54 Filed February 4, 1955

DEFENDANT THE ASSOCIATION OF WESTERN RAILWAYS'
ANSWERS TO INTERROGATORIES DIRECTED TO IT BY
PLAINTIFF ON JANUARY 20, 1955

1A. Yes.

3C. Alton & Southern Railroad
Atchison, Topeka & Santa Fe Railway
Baltimore & Ohio Chicago Terminal Railroad
Belt Railway of Chicago
Chicago & Western Indiana Railroad
Canadian National Railway
Canadian Pacific Railway
Chicago & Eastern Illinois Railroad
Chicago & Illinois Midland Railway
Chicago & Northwestern Railway
Chicago, Burlington & Quincy Railroad
Chicago Great Western Railway
Chicago, Milwaukee, St. Paul & Pacific Railroad
Chicago, Rock Island & Pacific Railroad
Chicago, St. Paul, Minneapolis & Omaha Railway
Colorado & Southern Railway
Colorado & Wyoming Railway
Davenport, Rock Island & Northwestern Railway
Denver & Rio Grande Western Railroad
Des Moines Union Railway
Duluth, Missabe & Iron Range Railway
Duluth, South Shore & Atlantic Railroad
Duluth, Winnipeg & Pacific Railway
East St. Louis Junction Railroad
Elgin, Joliet & Eastern Railway
Fort Worth & Denver Railway
Great Northern Railway
Green Bay & Western Railroad
Gulf, Mobile & Ohio Railroad
Illinois Central Railroad
Illinois Terminal Railroad
Kansas City Southern Railway
Kansas City Terminal Railway
Lake Superior & Ishpeming Railroad
Litchfield & Madison Railway
Louisiana & Arkansas Railway
Manufacturers Railway
Midland Valley Railroad
Minneapolis & St. Louis Railway
Minneapolis, St. Paul & Sault Ste. Marie Railroad
Minneapolis Transfer Railway
Missouri-Kansas-Texas Lines

Missouri Pacific Railroad
Missouri Pacific-Gulf Coast Lines
Nevada Northern Railway
Northern Pacific Railway
Peoria and Pekin Union Railway
St. Louis-San Francisco Railway
St. Louis Southwestern Railway
St. Paul Union Depot Co.
Sioux City Terminal Railway
Southern Pacific Lines
South Omaha Terminal Railway
Spokane International Railroad
Spokane, Portland & Seattle Railway
Terminal Railroad Association of St. Louis
Texas and New Orleans Railroad
Texas & Pacific Railway
Texas Mexican Railway
Toledo, Peoria & Western Railroad
Union Pacific Railroad
Union Railway (Memphis)
Wabash Railroad
Western Pacific Railroad

3D. Members of A. W. R. Who Are Not Members of W. T. A.:

Alton & Southern Railroad
Belt Railway of Chicago
Chicago & Western Indiana Railroad
Colorado & Wyoming Railway
Davenport, Rock Island & Northwestern Ry.
Des Moines Union Railway
East St. Louis Junction Railroad
Kansas City Terminal Railway
Manufacturers Railway
Minneapolis Transfer Railway
Nevada Northern Railway
Nevada Northern Railway
Peoria and Pekin Union Railway
St. Paul Union Depot Co.
Sioux City Terminal Railway
South Omaha Terminal Railway
Terminal Railroad Association of St. Louis
Texas Mexican Railway
Union Railway (Memphis)

Members of W. T. A. or Sub-group thereof
who are not members of The A. W. R.:

Arkansas & Louisiana Missouri Railway
Abilene & Southern Railway
Bamberger Railroad
Chicago, Aurora & Elgin Railway
Chicago, North Shore & Milwaukee Railway
Camas Prairie Railroad
Denver and Intermountain Railroad
Duluth & Northeastern Railroad
The Denison and Pacific Suburban Railway
Fort Dodge, Des Moines & Southern Ry.
Gulf, Colorado & Santa Fe Railway
Kansas, Oklahoma & Gulf Railway
Minneapolis, Anoka and Cuyuna Range Railroad
Minneapolis, Northfield and Southern Railway
Minnesota, Dakota & Western Railway
Minnesota Western Railway
Oregon Electric Railway
Oregon Trunk Railway
Oklahoma City-Ada-Atoka Railway
Panhandle & Santa Fe Railway
Pecos Valley Southern Railway
Portland Traction Co. (Portland Railroad and Terminal Division)
The Pullman Co.
Quannah, Acme & Pacific Railway
Saratoga & Encampment Valley Railroad
St. Louis Southwestern Railway Co. of Texas
St. Louis, San Francisco and Texas Railway
Sacramento Northern Railway
Sunset Railway
Texas-New Mexico Railway
Texas Northern Railway
Texas Short Line Railway
Tremont & Gulf Railway
Tidewater Southern Railway
Waterloo, Cedar Falls & Northern Railroad
The Weatherford, Mineral Wells and Northwestern Railway
The Wichita Valley Railway
Wichita Falls & Southern Railroad

- 8A. Executive Committee - Western Traffic Association - January
11, 1950
Trans-Continental Freight Bureau - February 21, 1950
Western Trunk Line Committee - March 7, 1950
Western Passenger Association - September 13, 1950
Trans-Continental Passenger Association - September 13, 1950

8B. By the respective executive committees of Trans-Continental Freight Bureau and Western Trunk Line Committee, and by the other named organizations as a whole.

8C. Yes.

Letter from Executive Committee - Western Traffic Association (W. H. Dana, Chairman) to A. F. Hucksold setting forth resolution. Dated April 25, 1950.

Letter from G. A. Moller, Western Trunk Line Committee to A. F. Hucksold setting forth resolution. Dated February 2, 1955.

Letter from Trans-Continental Freight Bureau (W. H. Dana, Chairman) to A. F. Hucksold setting forth resolution. Dated April 25, 1950.

Joint resolution, Trans-Continental Passenger Association and Western Passenger Association. Dated September 13, 1950.

A copy of each is in the possession of The Association of Western Railways.

8D. No. The organizations named in 8A were so designated pursuant to the following articles and sections:

Article V, Section 7
Article VI, Section 5
Article VII, Section 5
Article XII, Section 4
Article XIII, Section 4

8E. Not known to this defendant.

8F. A. F. Hucksold, Auditor
The Association of Western Railways
Union Station Building
Chicago, Illinois

8G. The expenses of the Accounting Department, The Association of Western Railways, are allocated to the organizations for which it performs accounting services. Organizations of the

Western Traffic Association are assessed in the following proportions:

Executive Committee - WTA	0.57%
Trans-Continental Freight Bureau	16.78%
Western Trunk Line Committee	14.71%
Western Passenger Association	3.03%
Trans-Continental Passenger Association	<u>1.81%</u>
TOTAL	36.90%

The Association of Western Railways receives no other compensation from Western Traffic Association. No employee or officer of The Association of Western Railways, as such, receives any compensation from WTA for maintaining its funds and accounts, except indirectly as part of the accounting department staff's salaries are covered by the payments to The Association of Western Railways.

- 11(a) Lessee: Executive Committee-Western Traffic Association.
Signers: H. C. Barron for Executive Committee-Western Traffic Association.

A vice-president of Sheraton, Inc., for the lessor.
This signature is illegible.

- 11(b) A. F. Hucksold, Auditor, and W. R. Nugent, Assistant Auditor, are authorized to sign such checks, and either or both may have done so during 1954.

- 11(c) L. Hill, Asst. to Chairman
711 14th Street, N. W.
Washington, D. C.

S. R. Wilson, Secretary to Asst. to Chairman
4004 Longfellow
Hyattsville, Maryland

E. E. Higgins, Clerk
R.F.D. 1, Epping Forest
Annapolis, Maryland

P. J. Thompson, Typist-Clerk
1019 Quebec Terrace
Silver Spring, Maryland

16. No.
18. No.
29. No.
30. No.

/s/ Daniel P. Loomis

Daniel P. Loomis
Chairman

STATE OF ILLINOIS }
COUNTY OF COOK } SS

I, Daniel P. Loomis, Chairman, The Association of Western Railways, state that the information contained in the foregoing Answers to Interrogatories is true to the best of my knowledge, information and belief.

/s/ Daniel P. Loomis

Daniel P. Loomis

Subscribed and sworn to
before me this 3rd day
of February, 1955.

/s/ O. E. Sobota

Notary Public

(HEADING OMITTED) Civil Action No. 4056-54 Filed February 8, 1955

MOTION TO QUASH RETURN OF SERVICE
OF SUMMONS OR TO DISMISS

1. Defendant, The Association of Western Railways, moves this Court to quash the return of service of summons on the ground that this defendant has not been properly served with process in this action; and in support thereof states:

a. Summons directed to this defendant was served on P. D. Shoemaker, Assistant to the Director of Public Relations, The Association of Western Railways.

b. The Association of Western Railways is an unincorporated association having its offices in Chicago, Illinois; it maintains no

office in Washington, D. C.

c. P. D. Shoemaker is not an officer, managing agent, or general agent of the defendant, nor is he an agent authorized by appointment or by law to receive service of process on behalf of the defendant.

All of which appears more fully in the affidavits of Daniel P. Loomis and P. D. Shoemaker attached hereto.

2. If the foregoing motion be denied, defendant, The Association of Western Railways, again moves this Court to dismiss this action as to it because it is in the wrong district, as more fully set out in the motion filed by it in this Court on December 15, 1954, a copy of which, together with supporting affidavits and memorandum of points and authorities, is attached hereto, and made a part of this motion. Said motion is now pending before this Court.

(Signatures omitted)

SIDLEY, AUSTIN, BURGESS
& SMITH
11 South LaSalle Street
Chicago, Illinois
Of Counsel

(HEADING OMITTED) Civil Action No. 4056-54 Filed February 8, 1955

AFFIDAVIT

STATE OF ILLINOIS }
COUNTY OF COOK } SS

DANIEL P. LOOMIS, being first duly sworn, deposes and says:

1. He is the Chairman of The Association of Western Railways, and, as such, is familiar with the organization and operations of that Association.

2. The Association of Western Railways is an unincorporated association. Its members are railroads in the western part of the United States. It has no written articles of organization of any nature.

3. The only offices of The Association of Western Railways are in Chicago, Illinois. It does not maintain an office or do business in the District of Columbia, and it therefore has no officer or agent in charge of any activities within the District of Columbia.

4. Since The Association of Western Railways has no written articles of organization, there is no express designation of officers. Only four positions are filled by the membership; Chairman, General Manager, Counsel, and Director of Public Relations. All other persons connected with the organization are hired as ordinary employees by the elected personnel. P. D. Shoemaker is one of four Assistants to the Director of Public Relations. He is not by any construction an officer of The Association of Western Railways.

5. P. D. Shoemaker is neither a managing agent or a general agent of The Association of Western Railways. His duties are those of an employee of the Public Relations Department employed by the Director of that Department as an assistant to perform such duties as are assigned to him.

6. The Association of Western Railways has not authorized P. D. Shoemaker to receive service of process, either generally or for any specific purposes. No statute, law, or decision requires the appointment by the Association of an agent to receive service of process, and P. D. Shoemaker is not an agent of the Association authorized to receive service of process by operation of law.

Further affiant saith not.

/s/ Daniel P. Loomis

Daniel P. Loomis

Subscribed and sworn to before
me this 7th day of February, 1955.

O. E. Sobota
Notary Public

(HEADING OMITTED) Civil Action No. 4056-54 Filed February 8, 1955

AFFIDAVIT

STATE OF ILLINOIS }
COUNTY OF COOK } SS

P. D. Shoemaker, being first duly sworn, deposes and says:

1. He is an Assistant to the Director of Public Relations, The Association of Western Railways. He is an employee of the Association, and is not, and has never been, an officer of the Association.

2. His duties are those of an employee of the Public Relations Department employed by the Director of that Department as an assistant to perform such duties as are assigned to him. He has never served as a managing or general agent of The Association of Western Railways, and he has never been authorized to receive service of process on its behalf.

3. The plaintiff herein has served him with notice of its intention to take his deposition in this litigation on May 2, 1955. He was in Washington, D. C. for the purpose of familiarizing himself with this litigation, and for no other purpose, when the summons and complaint in this cause were served upon him.

Further affiant saith not.

/s/ Paul D. Shoemaker
Paul D. Shoemaker

Subscribed and sworn to
before me this 25th day
of January, 1955.

/s/ Mary M. Hack
Notary Public

(HEADING OMITTED) Civil Action No. 4056-54 Filed February 8, 1955

MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF THE MOTION OF THE ASSOCI-
ATION OF WESTERN RAILWAYS TO QUASH OR
DISMISS

1. The complaint and summons in this case, directed to The Association of Western Railways, were served upon P. D. Shoemaker, an employee of the Public Relations Department, The Association of Western Railways. Rule 4 (d) (3), Federal Rules of Civil Procedure, provides that service of process on an unincorporated association may be made by serving "an officer, managing or general agent, or . . . any other agent authorized by appointment or by law to receive service of process". A defendant may show by affidavit that service was improper. Griffin v. Illinois Central R. Co., 88 F. Supp. 552 (N.D. Ill. 1949); Lawlor v. National Screen Serv. Corp., 10 F.R.D. 123 (E.D. Pa. 1953). The affidavits filed herewith clearly show that P. D. Shoemaker is not an officer, or managing agent, or general agent of The Association of Western Railways, nor is he authorized by appointment or by law to receive service of process. The service of summons is clearly insufficient.

2. The authority for dismissing this action for lack of venue is set forth in the memorandum filed by this defendant with this Court in this action on December 15, 1954. Said memorandum is hereby adopted and made a part of this motion.

(Signatures omitted)

SIDLEY, AUSTIN, BURGESS
& SMITH
11 South LaSalle Street
Chicago, Illinois
Of Counsel

(HEADING OMITTED) Civil Action No. 4056-54 Filed February 15, 1955

ORDER

The Court having found, upon motions to dismiss for lack of venue by defendants (34) Lehigh Valley Railroad Company, and (67) The Pittsburgh & West Virginia Railway Company, which motions were heard upon the pleadings, affidavits, plaintiff's interrogatories, defendants' answers to interrogatories, and oral argument, that the District of Columbia is not a proper venue for this action, as to these defendants,

and the Court having ordered that the plaintiff have until February 14, 1955 within which to apply for a further order severing and transferring the action as against these defendants to a district or districts having venue,

and the plaintiff having failed to apply for such a further order within the time limited, it is this 15 day of February, 1955,

ORDERED, that the action be dismissed as against defendants (34) LEHIGH VALLEY RAILROAD COMPANY, and (67) THE PITTSBURGH & WEST VIRGINIA RAILWAY COMPANY, for lack of venue, without prejudice and without costs.

James R. Kirkland

JUDGE

Order approved

T S L Perlman

Attorney for Plaintiff

(HEADING OMITTED) Civil Action No. 4056-54 Filed February 15, 1955

ORDER

The Court having found, upon motions to dismiss for lack of venue by defendants (69) RUTLAND RAILWAY CORPORATION, (6) THE AKRON, CANTON & YOUNGSTOWN RAILROAD, (24) THE DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY, (25) THE DELAWARE AND HUDSON

RAILROAD CORPORATION, (75) TOLEDO, PEORIA AND WESTERN RAILROAD, (60) THE CHICAGO RIVER AND INDIANA RAILROAD COMPANY, and (61) INDIANA HARBOR BELT RAILROAD COMPANY, which motions were heard upon the pleadings, affidavits, plaintiff's interrogatories, defendants' answers to interrogatories, and oral argument, that the District of Columbia is not a proper venue for this action as to these defendants,

and the Court having ordered that the plaintiff have until February 14, 1955 within which to apply for a further order severing and transferring the action as against these defendants to a district or districts having venue,

and the plaintiff having failed to apply for such a further order within the time limited, it is this 15th day of February, 1955,

ORDERED, that the action be dismissed as against defendants (69) RUTLAND RAILWAY CORPORATION, (6) THE AKRON, CANTON & YOUNGSTOWN RAILROAD, (24) THE DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY, (25) THE DELAWARE AND HUDSON RAILROAD CORPORATION, (75) TOLEDO, PEORIA AND WESTERN RAILROAD, (60) THE CHICAGO RIVER AND INDIANA RAILROAD COMPANY, and (61) INDIANA HARBOR BELT RAILROAD COMPANY, for lack of venue, without prejudice and without costs.

/s/ Alexander Holtzoff

JUDGE

Order approved

/s/ T. S. L. Perlman

Attorney for Plaintiff

(HEADING OMITTED) Civil Action No. 4056-54 Filed February 21, 1955

ORDER

The Court having found, upon motion to dismiss for lack of venue by defendant (13) The Central Railroad Company of New Jersey, which motion was heard upon the pleadings, affidavits, plaintiff's interrogatories, defendant's answers to interrogatories, and oral argument, that the District of Columbia is not a proper venue for this action as to this defendant, it is this 21st day of February, 1955,

ORDERED, that the action be dismissed as against defendant (13) THE CENTRAL RAILROAD COMPANY OF NEW JERSEY, for lack of venue, without prejudice and without costs.

/s/ James R. Kirkland
JUDGE

Order approved

T.S.L. Perlman
Attorney for Plaintiff

(HEADING OMITTED) Civil Action No. 4056-54 Filed March 21, 1955

ORDER

The Court having found, upon consideration of the motion of defendant (28) Elgin, Joliet and Eastern Railway Company to quash service for want of proper venue, the pleadings, affidavits, interrogatories, and defendants' answers to interrogatories that said defendant does not reside in the District of Columbia, is not found in the District of Columbia, does not transact business within said district, and has no agent therein within the meaning of Section 4 of the Clayton Act, and that the District of Columbia is not a proper venue for this action, it is this 21st day of March, 1955,

ORDERED, that the motion of defendant (28) Elgin, Joliet and Eastern Railway Company to quash service be granted.

/s/ James R. Kirkland
JUDGE

Order approved

/s/ Lester M. Bridgeman
Attorney for Plaintiff

(HEADING OMITTED) Civil Action No. 4056-54 Filed March 22, 1955

Washington, D. C.

Thursday, March 17, 1955.

RULING FROM THE BENCH by the Honorable James R. Kirkland, Judge, on MOTION of the NEW YORK, CHICAGO & ST. LOUIS RAILROAD COMPANY to DISMISS.

THE COURT: In the matter of Riss & Company, plaintiff vs. Association of American Railroads, et al, Civil Action No. 4056-54, the defendant, the New York, Chicago & St. Louis Railroad Company, popularly known as the Nickel Plate Line, has taken two affirmative actions in the present case.

In the month of December they moved to quash service upon one William Brenton, who the record clearly shows is a legal servant, being a clerk in an office maintained by the Nickel Plate Railroad in the Woodward Building.

Judge Alexander Holtzoff passed an order dated December 31, 1954, in which he made a finding of fact, to wit:

"The Court having found that the said defendant is not doing business in the District of Columbia --"

And later Judge Holtzoff quashed the service.

Judge Holtzoff has also given a Bench memorandum opinion. In his memorandum opinion Judge Holtzoff made this rather significant statement:

"The law in this jurisdiction is that if a foreign corporation carries on solicitation of business in the District of Columbia and has not other activity, solicitation of business does not constitute the doing of business in this jurisdiction.

"It is true that it was held in *Frene v. Louisville Cement Company*, 77 App. D. C. 129, that very little more than solicitation may be sufficient to constitute the doing of business in this jurisdiction. But there must be something more. If

solicitation of business does not constitute the doing of business, then, surely, maintaining an office at which nothing is done except solicitation of business does not add anything to that element.

"On the facts before the Court the only activity in this jurisdiction is the solicitation of business from a small office maintained here in which two employees make their headquarters."

The thing that the Court is pointing to is, it is quite clear that the activity of Mr. Brenton is that of a clerk or an employee. He is not a technical, legal agent. The only element of disconcert in the present matter is that in one listing Mr. Bruce, the other employee, is referred to as a general agent by description.

When one contemplates a general agent he thinks of a person fully equipped to act for and on behalf of his principals in dealing with third persons.

However, there has not been the showing that one would expect the activities of such a person to have. The record in the case shows that on a few occasions the general freight agent of the Nickel Plate has come into the District of Columbia. It raises a query in the Court's mind if Mr. Bruce be a general agent why is it necessary for the general freight agent to come in?

As Judge Holtzoff pointed out in his memorandum opinion, to merely maintain an office where the general bulk of business done is solicitation does not add that "something more."

In his memorandum opinion Judge Holtzoff continued and made this observation:

"In *Langdell v. Northern Pacific Railway*, 98 Fed. Supp. 479, there were some additional activities. In addition to soliciting business the defendant sold tickets for travel on defendant's line only, as well as railroad-prepared orders."

Of course, the sale of tickets from which the benefit would inure to a principal is a high show of transacting business in a normal sense.

The plaintiff alludes to the fact, by way of argument, that these employees put tracers out, they also handled complaints. That is countered by the defendant Nickel Plate Railroad pointing to the fact that when any such matter arose it was immediately referred elsewhere, and principally to Cleveland; that it did not do the work that one would expect the railroad service to give and that requests for tracers in the main were quite inconsequential, and that there is no showing that people dealt across the counter in the sense of making inquiries for solicitation of general business.

This Court expresses some doubt on the question of whether there is the transacting of business as required by the Clayton Act on the part of the Nickel Plate Railroad.

To buttress his position the plaintiff refers to Section 4 of the Clayton Act. It would appear to this Court that Section 4 has been deliberately set up in contradistinction to Section 12 by virtue of the language of old Paragraph 7 of the Sherman Anti-Trust Act. There Congress used language so broad as to imply that if any person was injured by "another person or corporation" he might sue in the district where the defendant was found.

This Court construes the present Clayton Act to mean by Section 4 that provision is made for service upon one other than a corporation and requires or allows such service to be made upon an agent of such a defendant.

However, Congress specifically set up in Section 12 provisions about serving corporations and used language that would indicate the types of service that might be had; namely, where the corporation was an inhabitant by virtue of being a chartered corporation from a particular state, or was found in the sense of having agents of broad capacity who could represent the corporation by its officers or by general agents, or by carrying on business, transacting business, which means a little more than mere solicitation. It should imply that in the case of a corporation it is the equivalent of saying that there must be present in the district by its officers activities of a corporation and that its agents be carrying on the business of the corporation.

I am constrained in my view by the view asserted by Judge Holtzoff where he indicates quite clearly that if all that is engaged in is solicitation the mere housing of persons engaged in that type of activity does not constitute transacting business, and he distinguished the Northern Railway Case, at 98 Fed. Supp. 479, that there was that "something extra" in that the agents sold tickets for travel as well as railroad-prepared orders.

There is no showing that in the complaints received, the tracers made, there was enough to indicate the transacting of business, and accordingly the Court will dismiss this case on the grounds of venue.

REPORTER'S CERTIFICATE

Certified to be the official transcript of the Ruling From the Bench in Riss vs. Association of American Railroads, et al, C.A. No. 4056-54, Thursday, March 17, 1955.

/s/ Robert J. Thiel
Official Reporter

ORDER

Filed Mar 22 1955

The Court having found, upon motion to dismiss for lack of venue by defendant (89) LITCHFIELD AND MADISON RAILWAY COMPANY, which motion was heard upon the pleadings, affidavits, plaintiff's interrogatories, defendant's answers to interrogatories, and oral argument, that the District of Columbia is not a proper venue for this action as to this defendant, it is this 22nd day of March, 1955,

ORDERED, that the action be dismissed as against defendant (89) Litchfield and Madison Railway Company, for lack of venue.

/s/ James R. Kirkland

JUDGE

Order approved

/s/ Lawrence Cake

Attorney for Defendant

(HEADING OMITTED)

Civil Action No. 4056-54

PRAECIPE

On May 23, 1955, a hearing was held before the Honorable Henry A. Schweinhaut, the Judge assigned to hear all matters in this case, on certain motions of defendant (2) The Association of Western Railways. The hearing resulted in the following disposition of said motions:

(1) The objections of The Association of Western Railways to certain Interrogatories served upon it by the Plaintiff on January 20, 1955 were sustained in part and overruled in part. In addition, certain objections were withdrawn by the said defendant, and certain Interrogatories were stricken by the Plaintiff. The rulings of the Court and the actions of the parties fully dispose of these objections.

(2) The motion of The Association of Western Railways for a protective order under Rule 30(b), Federal Rules of Civil Procedure, to limit the scope of the deposition of said defendant, by Daniel P. Loomis, was withdrawn upon agreement of the Plaintiff to take the deposition of Daniel P. Loomis, individually, as a witness in place of the deposition of the said defendant by Daniel P. Loomis.

(3) The motion of The Association of Western Railways to quash or modify the subpoena duces tecum served upon it was continued on the docket pending efforts by counsel for the parties to agree upon the materials to be produced.

Respectfully submitted,

/s/ Stuart Ball
Attorney for
The Association of Western Railways

Approved:

/s/ T. S. L. Perlman
Attorney for the Plaintiff

(HEADING OMITTED) Civil Action No. 4056-54 Filed July 27, 1955

**ANSWERS OF THE ASSOCIATION OF WESTERN RAILWAYS TO
INTERROGATORIES PROPOUNDED TO IT ON
JANUARY 20, 1955**

2. The A.W.R. does not, at the present time, have any written charter, by-laws, constitution, articles, plan of organization or statement of purposes.

3A. The purpose of The A.W.R. is to serve the interests of the railroad industry in the Western District of the United States.

3E. None.

3H. Yes.

(1) Executive Committee

(2) A. K. Atkinson, Wabash Railroad, President
Railway Exchange Bldg., St. Louis 1, Mo.

J. M. Budd, Great Northern Ry., President
175 East Fourth St., St. Paul 1, Minn.

J. D. Farrington, Chicago, Rock Island & Pacific Railroad,
President
La Salle Street Station, Chicago 5, Ill.

P. E. Feucht, Chicago & North Western Ry., President
400 West Madison St., Chicago 6, Ill

D. V. Fraser, Missouri-Kansas-Texas Lines, President
Railway Exchange Bldg., St. Louis 1, Mo.

F. G. Gurley, Atchison, Topeka & Santa Fe Ry. System,
President
80 East Jackson Blvd., Chicago 4, Ill.

Clark Hungerford, St. Louis-San Francisco Ry.
President
Frisco Bldg., St. Louis 1, Mo.

W. A. Johnston, Illinois Central Railroad, President
135 East Eleventh Pl., Chicago 5, Ill.

J. P. Kiley, Chicago, Milwaukee, St. Paul & Pacific Railroad,
President
516 W. Jackson Blvd., Chicago 6, Ill.

R. S. MacFarlane, Northern Pacific Railway, President
Northern Pacific Bldg., 5th & Jackson, St. Paul 1, Minn.

G. Allan MacNamara, Minneapolis, St. Paul & Sault Ste.
Marie Railroad, President
First National-Soo Line Bldg., Minneapolis, Minn.

H. C. Murphy, Burlington Lines, President
Burlington Bldg., 547 West Jackson Blvd., Chicago 6, Ill.

P. J. Neff, Missouri Pacific Lines,
Chief Executive Officer
Missouri Pacific Bldg., St. Louis 3, Mo.

D. J. Russell, Southern Pacific Co., President
65 Market St., San Francisco 5, Cal.

A. E. Stoddard, Union Pacific Railroad, President
Union Pacific Bldg., Omaha, Nebraska

- (3) The original selection of the Committee is not a matter of record. At the present time, vacancies result from the death or retirement of a member and are filled by his successor as President of the member road represented on the Committee.
- (4) Members serve for an indefinite term.
- (5) The Committee has authority over the administrative affairs of The Association of Western Railways and may act for the membership between meetings of the membership.

31. Yes

- (1) Daniel P. Loomis, Chairman
Union Station Bldg., Chicago, Illinois
826 Lincoln, Winnetka, Illinois
- (2) By resolution of the members of the Association, September 17, 1948.

(3) Indefinite term.

(4) To be the Chief Executive Officer of the Association, to preside at meetings, to perform such other duties, as may be assigned to him by the Executive Committee.

3M. None in District of Columbia.

3N. No bank account in District of Columbia.

3R. Union Station Building, Chicago 6, Illinois
105 West Adams Street, Chicago 3, Illinois

3S. Union Station Building, Chicago 6, Illinois
711 14th Street, N. W., Washington 5, D. C.
313 No. 9th Street, St. Louis 1, Missouri
815 Interurban Bldg., Dallas 1, Texas
717 Market Street, San Francisco 3, California
315 Union Station, Seattle 4, Washington

None of these offices is maintained in common with The A. W. R.

There are no employees of The A. W. R. or personal property of The A. W. R. in these offices.

4A. September 17, 1948.

4C. Yes.

4D. The A. W. R. absorbed W. A. R. E. and took over all of its physical property and rights of action. The Law, Public Relations, Auditing, and Administrative or Executive Departments of W. A. R. E. and all personnel and employees of W. A. R. E. were transferred to The A. W. R. The committees of W. A. R. E. became committees of The A. W. R., and the Executive Committee of The A. W. R. became the Committee on Labor Relations. The Office of Chairman of The A. W. R. was created. The constitution of The A. W. R. of November 5, 1909, as amended, was abrogated.

4F. The purpose of The A. W. R. after the merger was to carry on the functions then being performed by the departments, committees, and personnel of W. A. R. E., except that The A. W. R. continued to carry on the labor activities which it had performed prior to the merger.

- 4G. A resolution of chief executive officers of Western railways,
effective September 17, 1948.

A copy is in the possession of The A. W. R.

9. Abilene & Southern Ry.
*Ahnapee & Western Ry. Co.
*Alameda Belt Line
*Alaska Railroad
*Almanor RR
*Amador Central RR
*Angeline & Neches River RR
*Apache Ry
*Arcata & Mad. River RR
Arkansas & Louisiana Missouri Ry.
*Arkansas & Ozarks Ry. Co.
*Arkansas RR
Arkansas Western Ry.
*Ashley, Drew & Northern Ry.
Atchison, Topeka & Santa Fe Ry.
*Augusta RR
Bamberger RR
*Bauxite & Northern Ry.
*Bay Cities Transportation Co.
*Bevier & Southern RR
*Big Creek & Telocaset RR
*British Columbia Elec. Ry. Co. Ltd.
*Butte, Acadonda & Pacific Ry.
*California Western RR
Camas Prairie RR
*Camino, Placerville & Lake Tahoe RR
Canadian National Ry.
Canadian Pacific Ry.
*Canadian Transport Co. Ltd.
*Carbon County Ry.
*Cassville & Exeter Ry.
*Cedar Rapids & Iowa City Ry.
*Central California Traction Co.
*Charles City Western Ry.
Chicago & Illinois Midland Ry.
Chicago & North Western Ry.
Chicago, Aurora & Elgin Ry.
Chicago, Burlington & Quincy RR
Chicago & Eastern Illinois RR
Chicago Great Western Ry.
Chicago, Milwaukee, St. Paul & Pacific RR

Chicago North Shore & Milwaukee Ry.
*Chicago River & Indiana RR
Chicago, Rock Island & Pacific RR
Chicago, St. Paul, Minneapolis & Omaha Ry
*Chicago, West Pullman & Southern RR
*City of Prineville Ry.
Colorado & Southern Ry.
*Colorado & Wyoming Ry.
*Colorado Railroad, Inc.
*Columbia & Cowlitz Ry.
*Condon, Kinzus & Southern RR
*Copper Range RR
*Cotton Plant - Fargo Ry. Co.
*Cowlitz, Chehalis & Cascade Ry.
*Craig Mountain Ry.
*Dardanelle & Russellville RR
*Davenport, Rock Island & Northwestern Ry. Co.
*Delta Finance Co.
*Delta Valley & Southern
Denver & Rio Grande Western RR
*De Queen & Eastern RR
*Des Moines & Central Iowa RR
Doniphan, Kensett & Searcy Ry.
Duluth & Northeastern RR
Duluth, Missabe & Iron Range Ry.
Duluth, South Shore & Atlantic Ry.
Duluth, Winnipeg & Pacific Ry.
*El Dorado & Wesson Ry.
Elgin, Joliet & Eastern Ry.
*Escanabe & Lake Superior RR
*Evangeline Ry. Co.
*Feather River Ry. Co.
*Federal Barge Lines, Inc.
*Ferrocarril del Pacifico
*Fordyce & Princeton RR
Ft. Dodge, Des Moines & Southern Ry.
Ft. Smith & Van Buren Ry.
*Ft. Smith, Subiaco & Rock Island RR
Ft. Worth & Denver Ry.
*Gainesville Midland RR
*Galesburg & Great Eastern RR
*Galveston, Houston & Henderson RR
*Garden City Western Ry.
*Graysonia, Nashville & Ashdown RR
*Grand Trunk Ry.
Great Northern Ry.

* Non-members

*Great Western Ry.
G. B. & W., K. G. B. & W. Rys.
*Gulf Canal Lines, Inc.
Gulf, Colorado & Santa Fe Ry.
Gulf, Mobile & Ohio RR
*Harbor Belt Line
*Hillsboro & North Eastern Ry.
Holton Inter-Urban Ry.
Illinois Central RR
Illinois Terminal RR
*Inland Navigation Co.
*Kansas City, Kaw Valley RR
*Kansas City Public Service Co.
Kansas City Southern Ry.
Kansas City Southern (Acct. Louisiana & Ark).
*Kansas City Terminal Ry.
Kansas, Oklahoma & Gulf Ry.
*Klamath Northern Ry.
Lake Superior & Ishpeming RR
*Laona & Northern Ry.
*La Salle & Bureau County RR
Litchfield & Madison Ry.
*Longview, Portland & Northern Ry.
*Los Angeles Junction Ry. Co.
*Louisiana Southern Ry. Co.
*Louisiana & North West RR
*Louisiana & Pine Bluff Ry.
*Louisiana Midland Ry. Co.
*McCloud River RR
*Magma Arizona RR
*Manistique & Lake Superior RR. Co.
*Mansfield Ry. & Transp. Co.
*Manufacturers Ry. Co.
*Marinette, Tomahawk & Western RR
*Mason City & Cleark Lake RR
*Midland Continental RR
Midland Valley RR
*Milwaukee Electric Ry. & Transport Co.
Minneapolis & St. Louis Ry.
Minneapolis, Anoke & Cuymus Range RR
Minneapolis, Northfield & Southern Ry.
Minneapolis, St. Paul & Sault Ste. Marie RR
Minnesota, Dakota & Western Ry.
Minnesota Western Ry.

* Non-members

Missouri-Illinois RR
Missouri-Kansas-Texas RR And B.M. &E.
Missouri Pacific RR
*Modesto & Empire Traction Co.
*Montana Western Ry.
*Mount Hood RR
*Mount Vernon Terminal Ry., Inc.
*Municipality of East Troy
*Nevada Northern Ry.
New Orleans, Texas & Mexico Ry.
*Nezperce RR. Co.
*Nickols Transportation Co.
*Northeastern Oklahoma RR
Northern Pacific
*North Louisiana & Gulf RR
Northwestern Pacific RR
Oklahoma City-Ada-Atoka Ry.
*Ikmulgee Northern Ry.
*Oregon & Northwestern RR
*Oregon, California & Eastern Ry.
*Oregon, Pacific & Eastern Ry.
*Pacific Coast RR
Pacific Electric Ry
*Paris & Mt. Pleasant RR
Pecos Valley Southern Ry.
Petaluma & Santa Rosa RR
*Point Comfort & Northern Ry.
Portland RR & Terminal Div. of Port Trac. Co.
*Port Townsend RR
*Prescott & Northwestern RR
Quannah, Acme & Pacific Ry.
*Quincy RR
*Red Collar Line, Inc.
*Red River Barge Line
*The River Lines
*Rockdale, Sandow & Southern RR
*Roscoe, Snyder & Pacific Ry.
Sacramento Northern Ry.
*St. Francois County RR
St. Louis-San Francisco Ry.
St. Louis, San Francisco & Texas Ry.
St. Louis, Southwestern Ry.
*Salt Lake Garfield & Western Ry.
San Diego & Arizona Eastern Ry.
*Sand Springs Ry.
*San Luis Central RR

* Non-members

*San Manuel Arizona RR Co.
*Southern San Luis Valley RR
*Santa Marie Valley RR
*Sierra RR
*Southern Iowa Ry.
Southern Pacific Lines West of El Paso
Spokane International Ry.
S. P. & SOE & O. T. - United Rys. G. C. & W. RR
*Staten Island Rapid Transit Co.
*Stock Terminal & Eastern RR
*Sumpter Valley Ry.
Sunset Railway Co.
*Terminal RR Ass'n. of St. Louis
Texas & New Orleans RR
*Texas & Northern Ry.
Texas & Pacific Ry.
Texas Mexican Ry.
Texas New Mexico Ry.
*Texas, Oklahoma & Eastern RR
Texas Short Line Ry.
*Texas South Eastern RR
Tidewater Southern Ry.
Toledo, Peoria & Western RR
*Tooele Valley Ry.
Tremont & Gulf Ry.
*Trona Ry.
*Tucson, Cornelia & Gila Bend RR
*Tulsa-Sapulpa Union Ry.
Union Pacific RR
*Union Railroad of Oregon
*Utah Ry.
*Valley & Siletz RR
*Ventura County Ry.
Visalia Electric RR
Wabash Railroad
*Waco, Beaumont, Trinity & Sabine Ry.
*Walla Walla Valley Ry.
*Warren & Ouachita Valley Ry.
*Warren & Saline River RR
*Washington, Idaho & Montana Ry.
Waterloo, Cedar Falls & Northern RR
Weatherford, Mineral Wells & N. W. Ry.
Western Pacific RR
*Western Transportation Co.

* Non-members

- *White Sulphur Springs & Y.P. Ry.
- *Yakima Valley Transportation Co.
- *Yreka Western RR
- *Coastwise Line
- *Alaska Steamship Co.
- *American President Lines
- *Calmar Steamship Corp.
- *Isbrandtsen Company, Inc.
- *Isthmian Steamship Co. (Intercoastal Division)
- *State Marine Corp. of Delaware
- *Newtex Steamship Corp.
- *Olympic-Griffiths Lines
- *Pope & Talbot Inc.
- *Quaker Lines, Inc.
- *Waterman Steamship Corp.
- *Weyerhaeuser Steamship Co.
- *Pacific Fruit Express
- Pullman Company
- *Railway Express Agency

* Non-members

The A. W. R. also received, on behalf of the Western Traffic Association, the following:

- (a) Validation fees for round-trip tickets to Pacific Coast destinations.
- (b) Certificate fees paid by clergymen to obtain certificates entitling them to reduced rail fares.
- (c) Fees paid by agents to the Rail Travel Promotion Agency.
- (d) Service charges for tariffs and Classification Committee publications furnished to shippers and others, including truckers.

None of the funds collected for W. T. A. include funds for The A. W. R.

10. Continental Illinois National Bank and Trust Company of Chicago
231 South La Salle Street
Chicago 90, Illinois

The First National Bank of Chicago
Dearborn, Monroe and Clark Sts.
Chicago 90, Illinois

City National Bank and Trust Company of Chicago
208 South La Salle Street
Chicago 90, Illinois

Mercantile National Bank of Chicago
541 West Jackson Blvd.
Chicago 6, Illinois

.. All of these accounts are and have been maintained in the name of The A.W.R. Each account is a checking account. The account at the Continental Illinois is inactive, although funds are on deposit there.

E.F. Dickow, Cashier, The A.W.R., may sign checks for amounts under \$200.00. These cover salary checks, time drafts, and personal expense reimbursements. All checks over \$200.00 must be countersigned by A. F. Huckshold, Auditor, or W. R. Nugent, Assistant Auditor. Vouchers must be signed by the Cashier and either the Auditor or the Assistant Auditor. In the absence of the Cashier, the Auditor and the Assistant Auditor, together, may sign vouchers.

11(3). None

11(f) None.

12. Yes.

The typing pool of The A.W.R. and the Joint Railway Mailing Bureau from time to time perform services for Western Traffic Association. All such services are performed in Chicago, and Western Traffic Association is billed for these services.

19A. (1) No.

(2) No.

20. By making the following answers, The A.W.R. does not admit that any of said visits were on "business" of The A.W.R., or that they are relevant in determining that The A.W.R. is "found" in the District of Columbia within the meaning of Section 4 of the Clayton Act.

Daniel P. Loomis, Chairman

Board Meetings, Association of American Railroads

1950 - 2/24, 3/31
1951 - 4/27, 6/29, 10/26
1952 - 2/29, 3/28, 9/26
1953 - 1/30, 2/27, 3/27, 4/24, 5/22, 10/30
1954 - 6/25, 10/29

Committee Meetings, Association of American Railroads

1951 - 4/23
1953 - 1/29

Meetings between Railroad Chief Executives and Labor Union Chiefs

1950 - 2/23
1953 - 6/11

Meetings, YMCA Transportation Dept. Committee

1950 - 10/10, 12/12
1951 - 3/8, 10/11, 12/13
1952 - 3/13, 10/22

Lectures, Rail Transportation Institute, American University

1951 - 3/13
1952 - 3/12
1953 - 3/10

Appearances before Committees of Congress and meetings in connection with such appearances

1950 - 5/22, 5/23, 5/25, 6/28, 6/29, 7/25

Meeting of Rail Counsel to consider contract for Government operation of railroads

1950 - 9/5, 9/6

Meeting, Labor Law Committee, American Bar Association

1950 - 9/19

Meeting, Labor-Management Committee of Manpower Policy
Committee, Office of Defense Mobilization

1951 - 7/26, 8/23, 9/13, 10/11

1952 - 3/13

Meeting called by Nelson Bortz, Chairman, Air Line - Railroad
Wage Stabilization Board

1952 - 2/18, 2/19

Meeting, President's Committee on Employment of Physically
Handicapped

1952 - 9/4

Meeting of U. S. Chamber of Commerce Labor Committee

1952 - 9/5

Meeting called by A.A.R. to discuss legislation affecting railroads.

1953 - 2/13

O. E. Sobota, Secretary to Mr. Loomis

Assisting Mr. Loomis

1950 - 5/22, 5/23, 5/25, 6/28, 6/29, 7/25, 9/5, 9/6, 9/19, 10/10, 12/12

1951 - 3/8, 3/13, 4/23, 4/27, 6/29, 7/26, 8/23, 9/13, 10/11, 10/26, 12/1

1952 - 2/18, 2/19, 2/29, 3/12, 3/13, 9/4, 9/5, 9/26, 10/22

1953 - 1/29, 1/30

1954 - 10/29

Joseph H. Hays, Counsel

All of Mr. Hays' visits to the District of Columbia have been in connection with proceedings before the Interstate Commerce Commission, Courts, and other federal administrative agencies in connection with federal legislation or appearances or to attend meetings of the Association of American Railroads or one or more of its committees.

1950 - 7/26-27, 12/1-2, 12/11

1951 - 3/29-30, 4/28-30, 5/1-3, 9/13-17, 10/9-10, 10/15, 11/19-20
11/25-30, 12/2-8, 12/9-18,
1952 - 1/3, 1/8-24, 1/30-31, 2/1, 2/10-15, 4/4-5, 8/22-23, 9/1-3,
10/3-4, 10/15-16, 11/6, 12/29-31
1953 - 1/17-21, 2/4-5, 4/6-7, 4/14-16, 4/17-23, 4/28-30,
5/1-7, 5/18-22, 5/28, 6/4-5, 6/10-11, 6/15-16, 6/29-30,
7/1-6, 9/12, 11/30, 12/1, 12/8
1954 - 2/5, 2/16-24, 4/9, 4/26-27, 5/24, 6/28-29, 7/19-20, 7/27-28,
8/24-25, 9/20-21, 9/29, 10/7-8, 10/15

Amos M. Mathews, Attorney

All of Mr. Mathews' visits to the District of Columbia have been in connection with proceedings before the I. C. C. , courts or other federal administrative agencies, to attend meetings of the Association of American Railroads, or in connection with appearances before Committees of Congress.

1950 - 2/15-21, 4/23-27, 5/25, 7/6, 7/26-27, 10/20, 11/2
1951 - 2/6-8, 2/23, 3/12, 5/21, 5/31, 6/26, 7/16-19, 7/31, 8/1-2
1952 - 4/21, 4/24-25, 5/27-28, 6/24, 9/10-12, 9/17-19, 9/22-24, 9/30
1953 - 1/4-6, 3/9, 3/30-31, 4/7, 4/17-30, 5/1-2 7/6-9, 8/5, 11/4-5
11/25
1954 - 1/25, 2/20-25, 3/8-9, 3/18, 5/5-11, 6/7-8, 6/14-30, 7/1,
7/25-29, 10/8, 11/17

James W. Nisbet, Attorney

All of Mr. Nisbet's visits to the District of Columbia have been in connection with proceedings before the I. C. C. , other federal administrative agencies, or courts.

1950 - 4/18-20, 6/13-14, 7/9-15, 9/7-9, 12/1-2
1951 - 2/14-16, 4/10-13, 6/28-29, 7/6, 7/19-21, 7/25-26,
8/21-22, 11/19-21, 11/25-30, 12/1-19
1952 - 1/3-4, 1/8-24, 1/28-31, 2/1, 2/12-21, 2/25-28, 4/1-2, 4/27-30,
5/22, 6/23-24, 7/27-30, 9/3-9, 10/9-10, 11/17-18, 11/24-26,
12/11-12
1953 - 1/14-15, 1/26-27, 3/16-18, 6/9-11, 6/17-18, 7/13-14, 7/19-24,
11/5-6, 11/30, 12/14-18
1954 - 1/7-8, 1/18-19, 2/22-24, 3/16-17, 3/25-26, 3/30, 4/13-15,
4/20-22, 4/27-29, 7/27-28, 8/13-14, 8/20-21, 10/8, 10/25-28,
12/6-9, 12/13-14

Ed White, Attorney

All of Mr. White's visits to the District of Columbia have been in connection with proceedings before the I. C. C. and other federal administrative agencies.

1950 - 4/18-20, 7/10-15

1951 - 2/23, 6/4-5, 6/13-14, 8/9, 9/13, 10/10

1952 - 5/27, 6/16-17, 10/22, 11/10

1953 - 3/16, 4/27-28, 5/10-11, 7/13, 8/4, 8/27, 11/4-5

1954 - 1/19, 2/1-3, 3/2-5, 10/25-27

J. D. Feeney, Jr., Attorney

All of Mr. Feeney's visits to the District of Columbia have been in connection with proceedings before the I. C. C. and other federal administrative agencies.

1952 - 9/2-12, 9/15-19, 9/22-30, 10/1-2, 10/6-10, 10/13-17, 10/21-24
10/27-31

1953 - 1/9-16, 1/26-31, 2/1-6, 2/9-20, 2/24-26, 3/2-13, 3/17-20,
3/23-26, 3/30-31, 4/1-22, 4/27-30, 5/1, 5/4-7, 5/28, 6/6,
6/10-11, 7/9-10

1954 - 3/23-26, 3/29-31, 4/1-2, 4/5-15, 4/16-24, 4/29, 5/10-13,
5/16-21, 6/22-24, 8/3-7, 10/26-27, 11/7-10, 11/15-19,
11/22-24, 12/7-10, 12/13-16

R. J. Bernard, Attorney

Mr. Bernard's visits to the District of Columbia have been in connection with proceedings before the I. C. C.

1954 - 10/23-27, 12/20-21

Lyle H. Boren, Special Representative

All of Mr. Boren's visits to the District of Columbia have been in connection with proceedings before the I. C. C. or other administrative agencies, or legislative matters pending before Congress.

1951 - 11/26-30, 12/1-11

1952 - 1/8-15, 1/16-17, 2/11-13, 4/4-10, 4/20-30, 5/1, 5/13-15,
5/16-28, 6/20-24

1953 - 1/23-26, 4/6-8, 4/15-29, 5/7-12, 5/25-27, 5/29-31, 6/1-10,
6/17-26, 7/6-15, 7/16-23, 7/30

1954 - 2/1-3, 2/18-19, 5/5-13, 6/6-8, 7/12-15, 7/26-28, 8/6-19

Chester K. Smith, Research Engineer

All of Mr. Smith's visits to the District of Columbia were in connection with legislative matters pending before Congress and I. C. C. proceedings.

1950 - 2/15-18

1953 - 4/28-30, 7/7

Frank E. Haas, Special Representative

All of Mr. Haas' visits to the District of Columbia were in connection with proceedings before the I. C. C., or legislative matters pending before Congress, or to attend meetings with railway labor organizations.

1950 - 1/17-19, 2/7-9, 2/28, 3/1-3, 3/7-9, 3/13-22, 7/26-27,
8/15-17, 8/21-24, 8/29-31, 9/11-14

1951 - 1/23-25, 4/29-30, 5/1-2, 9/12-13, 10/17-18, 11/19-20,
11/26-30, 12/1-18

1952 - 1/8-24, 2/14-21, 4/4, 4/21-23, 5/27-28, 8/22

1953 - 4/14-16, 4/21-23, 4/27-30, 5/25-28, 6/11-12, 6/17-18,
7/7-9, 7/15-16, 7/21-23, 7/29-30

1954 - 1/25-28, 2/1-4, 2/16-24, 5/7-10, 6/24-25, 7/12-15, 8/3-5,
8/9-10, 8/16-17

Frank J. Stanton, Chief Clerk and Secretary to Counsel

All of Mr. Stanton's visits to the District of Columbia were for the purpose of assisting Mr. Hays.

1951 - 4/28-30, 5/1-3, 10/9-10, 11/25-30, 12/1-18

1952 - 1/9-24, 1/30-31, 2/1, 2/12-15

1953 - 4/14-16, 5/17-20

1954 - 2/16-24, 12/2

A. F. Huckshold, Auditor

Attending meeting, Accounting Division, A. A. R.

1954 - 5/23-27

Public Relations Dept.

The records of the Public Relations Department do not indicate the purpose of each trip made by members of the staff to the

District of Columbia, or elsewhere. The Department attempts to have a member of the staff attend all meetings, proceedings, and conferences which relate to the collective problems of the western railways. While occasional public relations services may be performed at such meetings, etc., the general purpose of attendance is to keep the Department advised concerning such activities and the views of the member roads.

Trips to the District of Columbia were generally in connection with the following activities, unless otherwise indicated:

Attending meetings of committees of the A.A.R., e.g., public relations and advertising.

Conferences with A. A. R. Public Relations officers.

Hearings before the I. C. C.

House and Senate Committee Hearings.

H. M. Sims, Director

1950 - 2/15, 8/24-31

1951 - 3/20-22, 3/26-28, 11/7

1952 - 5/5, 9/18, 9/28, 11/7, 12/13, 12/17

1953 - 12/8

T. J. Kienlen, Assistant to Director

1951 - 5/8, 5/16, 5/24, 7/23

Z. G. Hopkins, Assistant to Director

1951 - 11/14, 11/15

1953 - 11/5, 11/6

P. D. Shoemaker, Assistant to Director

1950 - 1/3-5, 1/18-20, 1/24-28, 2/1-9, 2/15-21, 2/23-25, 3/15-17,
6/22, 7/3, 7/26-27, 11/6-7,

1951 - 1/15-22, 5/13-22, 9/13-14, 10/9-11, 11/16, 11/18-20,
11/26-30, 12/1-14, 12/17-18,

1952 - 1/8-24, 1/28-31, 2/1, 5/2-3, 5/5-9, 6/23-24, 10/3-5, 10/15-16,
12/6-8, 12/29-30

1953 - 1/24-25, 2/14-17, 3/6-9, 4/9-12, 4/14-17, 4/20-24, 5/6-8,
5/19-21, 6/24-29, 9/18-21, 12/5-8

1954 - 2/16/25, 3/1-2, 3/8-10, 4/22-24, 5/13-15, 7/27-31, 10/12-14

W. W. Abbey, Assistant to Director

To attend meeting, American Society of Traffic & Transportation

1954 - 10/29

J. G. Pate, Assistant to Director

At Bureau of Ry. Econ., A.A.R.

1954 - 3/30, 6/24

21A.	<u>Payee</u>	<u>Purpose</u>	<u>Date (1954)</u>	<u>Amount</u>
	Association of American Railroads Transportation Building	Western Lines Share of Expenses - Section of Wage Statistics, Bureau of Rail- way Economies	1-8	\$1,770.15
			2-3	1,448.60
			3-4	1,412.27
			4-7	1,396.08
			5-11	1,410.81
			6-4	1,434.41
			7-12	1,404.10
			8-6	1,371.41
			9-7	1,361.40
	Press Intelligence, Inc. 724 Ninth St., N. W.	Clipping Service	1-14	64.05
			2-11	42.90
			3-22	65.25

<u>Payee</u>	<u>Purpose</u>	<u>Date (1954)</u>	<u>Amount</u>
		4-20	\$ 39.75
		5-14	12.45
		6-22	2.40
		7-15	1.80
		8-13	3.90
		9-14	2.70
Columbia Reporting Co. 939 "D" Street, N. W.	Transcript - I. C. C. Proceed- ing	3-3	41.99
	"	4-9	259.13
	"	4-23	89.73
	"	5-4	25.62
	"	7-6	71.00
	"	8-9	1,063.27
Leland O. Ritchie Transportation Bldg.	Compiling data from I. C. C. records	3-2	37.80
Leland O. Ritchie Transportation Bldg.	Services in connection with I. C. C. Pro- ceeding	8-2	100.00
Fred Bailey, Executive Director	Contribution	5-7	7,500.00
Farm Roads Foundation 744 Jackson Place	"	7-7	5,000.00
The Hotel Raleigh	Guest accounts	3-2	477.40
Joseph D. Feeney, Jr.	Reimbursement for photostats used in I. C. C. proceeding	4-6	33.06

<u>Payee</u>	<u>Purpose</u>	<u>Date (1954)</u>	<u>Amount</u>
Transport Topics 1424 16th St., N.W.	Subscription to Transport Topics	5-27	\$ 7.50
	"	9-13	12.00
The Business Outlook 2346 N Street, N.W.	Subscription to Report on the Business Outlook	1-28	25.00
The Traffic Service Corp. 815 Washington Bldg.	Subscription to Weekly Traffic World, Daily Traffic World	2-5	181.33
Washington Daily Reporter System 1231 - 24th St., N.W.	Subscription to Daily Labor Report	4-20	789.88
Nat'l Association of Railroad and Utilities Com- missioners 7413 New P.O. Bldg.	Subscription to Nat'l. Assn. of R. R. and Util. Comm.	5-11	25.00
Chamber of Commerce of U.S.	Subscription to Nation's Business	5-27	18.00
National Law Book Co. 1110 13th St., N.W.	Subscription to Adv. Sheets, Vol. 60, M. C. C.	8-3	2.50
Amer. Assn. of State Highways Officials 917 Nat'l. Press Bldg.	Subscription to American Highways	9-1	2.00
Nat'l Highway Users Conference, Inc. Nat'l. Press Bldg.	Subscription to Motor Vehicle Law Rep. Service	9-7	75.00
The Bureau of National Affairs 1231 24th Street, N.W.	One volume - Supreme Court Practice	2-17	7.62
Chamber of Commerce of U.S.	One copy, A Dynamic Highway Policy for the Future	2-17	2.00

<u>Payee</u>	<u>Purpose</u>	<u>Date (1954)</u>	<u>Amount</u>
The Traffic Service Corp. 815 Washington Bldg.	Copies of Traffic World	3-15	\$ 15.00
Association of I. C. C. Practitioners 2218 I. C. C. Bldg.	One copy, 286 Abstracts of Supreme Court Decisions Interpreting the Interstate Commerce Act and Supplementary Acts	4-30	5.00
"	One copy, Fair Reward and Just Compensation, Common Carrier Service	5-13	3.50
American Ass'n of Vehicle Administrators 912 Barr Bldg.	Associate Membership Dues	1-7	100.00

21B Beyond the information furnished in answer to 21A, the records of The A.W.R. reveal no payments made to any persons or organizations for services performed in the District of Columbia from January 1, 1954 to September 30, 1954.

22. Films

The A.W.R. has made grants to Farm Roads Foundation for the purpose of distributing a film, "Highways and Byways, U.S.A.," which explains the need for and means of financing farm roads. Farm Roads Foundation has offices at 744 Jackson Place, Washington, D. C. The A.W.R. does not know whether or not said film has been distributed from or in the District of Columbia. Copies may be obtained from Farm Roads Foundation.

Grants

The A.W.R. contributed \$42,845.56 to the cost of the film mentioned above. The film was not produced in the District of Columbia. The completed film was, however, donated to Farm Roads Foundation.

The A.W.R. has contributed \$19,185.50 to the Foundation.

Payments were made on the following dates:

1953 - 1/8, 3/5, 6/16, 9/4, 12/22

1954 - 5/7, 7/7, 11/2, 12/27

Payments were made to Farm Roads Foundation or to Fred Bailey, Executive Director, Farm Roads Foundation.

Articles - No.

Press Releases

As indicated in answer to Interrogatory 20, employees of the Public Relations Department have, from time to time, been in Washington to cover various proceedings of interest to Western railroads. Press releases concerning certain of these proceedings have been prepared and distributed, but the records of The A.W.R. do not indicate which, if any, releases were prepared or distributed in Washington, D. C. The A.W.R. retains copies of press releases.

Other Publications

The A.W.R. Public Relations Department distributes a monthly bulletin called "Information from the Western Railways Public Relations Office," which it mails from Chicago to various railroad personnel and to news agencies, some of which are located in Washington, D. C. This bulletin contains statements of the position of the railroads on various issues, news of matter of interest to railroads, and reprints from various publications. The A.W.R. retains copies of these bulletins.

The A.W.R. Public Relations Department also distributes a monthly bulletin called "Competitive Transportation," which it mails from Chicago to persons in the railroad industry, some of whom are located in Washington, D. C. This bulletin contains information concerning competitive transportation of interest to the railroads. The A.W.R. retains copies of these bulletins.

From time to time, The A. W. R. Public Relations Department distributes reproductions of material from various publications, particularly newspapers. This material is mailed from Chicago, and some of it is directed to railroad personnel and news agencies in Washington, D. C. Copies are retained by The A. W. R.

23. Yes.

- a. Farm Roads Foundation, Inc.
744 Jackson Place, N. W.
Washington, D. C.
- b. To cooperate with persons interested in agriculture in planning for an adequate, balanced roads program.
- c. About November, 1952.
- d. To further the railroads' long-standing interest in adequate farm-to-market
- e. None
- f. None
- g. Grants - See the answer given to Interrogatory 22.

28. Yes.

Statements of expense and assessments are prepared on the following basis:

Quarterly -

Trans-Continental Passenger Association
Western Traffic Association -

Executive Committee (including
Statistical Bureau, Western
Classification Committee)

Monthly -

Trans-Continental Freight Bureau
Western Trunk Line Committee
Western Passenger Association

Copies are retained in the custody of The A. W. R.

31. None

34. No

(Verification Omitted)

(Certificate of Service Omitted)

/s/ Daniel P. Loomis
Chairman

(HEADING OMITTED) Civil Action No. 4056-54 Filed August 15, 1955

MOTION FOR LEAVE TO AMEND
ANSWERS TO INTERROGATORIES

Defendant, The Association of Western Railways, moves the Court for leave to amend the answers of Daniel P. Loomis, subscribed and sworn to on July 26, 1955, to Plaintiff's Interrogatory 22 in the manner shown in the attached affidavit of said Daniel P. Loomis, on the ground that such amendment is necessary to correct an error in said answer.

(Signatures omitted)

SIDLEY, AUSTIN, BURGESS &
SMITH
11 South LaSalle Street
Chicago, Illinois
Of Counsel

(HEADING OMITTED) Civil Action No. 4056-54 Filed August 15, 1955

AFFIDAVIT

STATE OF ILLINOIS }
COUNTY OF COOK } SS

Daniel P. Loomis, being duly sworn, deposes and says: In the last paragraph in the answer to Plaintiff's Interrogatory 22, it was inadvertently stated that The A. W. R. Public Relations Department distributes reproductions of material from various publications to news agencies in Washington, D. C. Such reproductions are not distributed to news agencies in Washington, D. C. The answer as filed will be correct if the words "and news agencies" are stricken from the last sentence in the last paragraph in the answer to Interrogatory 22.

Further affiant saith not.

/s/ Daniel P. Loomis

Daniel P. Loomis

Subscribed and sworn to
before me this 11th day of
August, 1955.

/s/ O. E. Sobota

Notary Public

My Commission expires February 11, 1955.

(CERTIFICATE OF SERVICE omitted)

(HEADING OMITTED) Civil Action No. 4056-54 Filed October 6, 1955

AFFIDAVIT OF A. ALVIS LAYNE, JR.
IN OPPOSITION TO MOTIONS OF DEFENDANT
(2) THE ASSOCIATION OF WESTERN RAILWAYS
TO QUASH RETURN OF SUMMONS OR TO DISMISS

City of Washington)
District of Columbia) ss:

A. Alvis Layne, Jr., being duly sworn, deposes and says as follows:

I am one of the attorneys for the Plaintiff in this action and am familiar with the matters relevant to the motions of the Defendant (2) The Association of Western Railways (hereinafter "The A. W. R. ") to quash return of summons or to dismiss.

A copy of the summons and complaint was served upon an employee of the Western Traffic Association in the Western Traffic Association's office in this District, in September, 1954, and thereafter, service on the A. W. R. was also made by handing a copy of the summons and complaint, in this District, to Paul D. Shoemaker, one of the "principal personnel" of The A. W. R.

These motions are based upon the claims of this defendant (1) that service upon one who is admittedly an officer or proper agent for service on the Western Traffic Association (hereinafter "W. T. A. ") in this District does not constitute service on the A. W. R. , because the W. T. A. is not an agent or department or division of The A. W. R. ; and (2) that service upon Paul D. Shoemaker in this District was not proper service on The A. W. R. because Shoemaker is not an officer, or managing or general agent of The A. W. R. , nor an agent authorized by appointment or by law to receive service of process for it. The A. W. R. also challenges the venue by asserting that it neither resides, nor is found nor has an agent in the District of Columbia.

This affidavit is submitted in support of Plaintiff's points and authorities in opposition to the above-mentioned motions. It sets forth the factual basis for Plaintiff's conclusion that valid service was made on The A. W. R. and that venue is properly laid in this District. Specifically this affidavit states facts showing that:

1. The Western Traffic Association is an agent of The Association of Western Railways, and
2. The Association of Western Railways is doing business in the District of Columbia.

Since the factual basis for Plaintiff's conclusion that Paul D. Shoemaker is an officer or an agent through whom service on The A. W. R. may properly be made is adequately set out in various documents filed in this suit by The A. W. R., no attempt will be made to restate those facts here.

I. The Western Traffic Association Is An Agent of The Association of Western Railways.

The Defendant The Association of Western Railways is an unincorporated association of Class I Railroads in the Western District, with its headquarters in Chicago, Illinois. It has no offices or other facilities in the District of Columbia in its own name. Each member railroad of The A. W. R. is represented in the Association by its president or chief executive officer. The A. W. R. now has no written charter, by-laws, constitution, or articles or plan of organization, or statement of purposes. However, for the seven years prior to the filing of the Complaint in this case, The A. W. R. filed quarterly reports under the so-called Federal Lobbying Act, which described its functions as follows: "The principal purpose of this association is to deal with matters which are regional in character and which are of common concern to the railroads of the Western District. It affords means for handling, and supervises joint facilities of western lines which handle, matters of policy, operating matters, the

weighing and inspection of freight, promotion of freight and passenger traffic, adjustment and publication of rates and related matters, the handling of labor relations, public relations, and economic, legal and transportation research and matters of similar character."

The Western Traffic Association is an unincorporated association of railroads in Western Territory which, through an executive committee, and various subordinate bureaus, committees, subcommittees and associations, establishes, adjusts and publishes joint rates, fares and charges, establishes and adjusts divisions of rates and classifies commodities for rate-making purposes. It should be noted that the previously-quoted statement of The A. W. R. reports that that Association "affords means for handling and, supervises joint facilities of western lines which handle--adjustment and publication of rates and related matters." It is apparent that these functions are performed for The A. W. R. by the Western Traffic Association. The A. W. R. does not perform such functions in its own name, and the Western Traffic Association is the "joint facility" which performs those functions for the railroads in Western Territory. Clearly, therefore, W. T. A. is a means for handling joint rates, operated by and under the supervision of The A. W. R.

The facts set forth below also clearly show that: (1) The policies of the Western Traffic Association are dominated and controlled by those of its members who are also members of The A. W. R.; and (2) The A. W. R., through its Accounting Department administers the funds of the Western Traffic Association, and directly performs all of the fiscal and accounting functions of that Association.

1. The affidavit of the Chairman of The A. W. R., submitted in support of the subject motions, asserts, inter alia, as ground for the claim of The A. W. R. that the Western Traffic Association is not its agent, that the membership of The A. W. R. and W. T. A. is not identical. Although there is not an identity of membership of the two

associations, an examination of the relationship of the members of both, unquestionably indicates that the Western Traffic Association is controlled by The A. W. R.

The answers of The A. W. R. to Plaintiff's interrogatories report that 47 of the 84 members of the W. T. A. are also members of The A. W. R. This figure, however, understates the extent of The A. W. R.'s control of the W. T. A. The A. W. R. is composed only of Class I railroads in Western territory, that is to say, those with gross operating revenue in excess of one-million dollars annually. The W. T. A. includes in its membership all of these Class I railroads which are concerned with joint rates and numerous railroads whose revenues are not great enough to give them Class I status.

Furthermore, I am informed and believe that at least 19 of the 37 members of W. T. A. which are not members of The A. W. R. are subsidiaries of one or more members of The A. W. R. In addition two of the remaining 18 have management and ownership identical with that of one of the members of The A. W. R. Thus at least 68 of the 84 members of W. T. A. are either members of The A. W. R., or are controlled by members of The A. W. R. Moreover, over 97% of the expenses of the W. T. A. in 1954 were borne by those of its members which are members of The A. W. R., and over 93% of the 1954 expenses of the W. T. A.'s Executive Committee were borne by A. W. R. members. Control of the Western Traffic Association by The A. W. R. is apparent from these facts alone.

2. The governing body of the Western Traffic Association is its Executive Committee, which, according to the Association's Articles of Organization and Procedure, consists of 30 named railroads, 29 of which are members of The A. W. R.; 15 of these 29 comprise the entire Executive Committee of The A. W. R. The A. W. R. thus has a much greater representation on W. T. A.'s Executive Committee than

its mere numerical dominance of the membership would afford, and the railroad members of its own Executive Committee have at least negative control over the W. T. A.'s Executive Committee. Moreover, these member railroads are represented in the W. T. A. either by the very same persons who also direct and control The A. W. R., or by their subordinates.

3. The affidavits filed by The A. W. R. in support of its motions claim that it has been "designated as the agency" to maintain funds and accounts of the various suborganizations of the Western Traffic Associations. These affidavits attempt to reverse The A. W. R.'s true relationship to the W. T. A. by now characterizing The A. W. R. as an agent of the W. T. A., although the A. W. R.'s lobbying reports which antedated this lawsuit plainly characterize the W. T. A. as an agent of The A. W. R.

There is no dispute that various papers passed between the two organizations describe The A. W. R. as the "agent" of W. T. A. to maintain the funds and accounts of the latter organization. There is also no dispute that the funds of the W. T. A. are maintained in checking accounts in various Chicago banks in the name of The A. W. R., and that checks may be drawn against these accounts only by certain employees of The A. W. R. There is no claim that any officers or employees of W. T. A. tell any of the check-writing employees of The A. W. R. when, or for how much, or to whom these checks should be drawn.

Payments on the lease of the offices of the Western Traffic Association in the District of Columbia are paid with checks drawn on these accounts. Further, it is apparent, from The A. W. R.'s answers to interrogatories that the employees of W. T. A., including those in the District of Columbia, are paid by checks drawn on accounts maintained in the name of The A. W. R., and signed by the cashier, auditor, or assistant auditor of The A. W. R. whose members bore more

than 94% of the expenses of the W. T. A. 's office in this District in 1954. The A. W. R. reports that 36.90% of the work of its Accounting Department is performed for the Western Traffic Association. In addition, The A. W. R. 's typing pool and its Joint Railway Mailing Bureau perform services for Western Traffic Association. It is apparent from the answer of The A. W. R. that it is reimbursed by W. T. A. only for the actual cost of performing these various services. There is no contract of agency or any other written agreement between The A. W. R. and the W. T. A. which controls the terms of payment for these alleged "agency" services. Plaintiff and The A. W. R. both agree that a principal-agent relationship exists between these associations which does not rest upon a written contract. However, the undisputed facts as to the nature of the relationship show a control and supervision of the W. T. A. by The A. W. R., rather than vice versa, which makes out The A. W. R. as principal, and W. T. A. as agent.

The history of the various unincorporated associations through which the railroads in Western Territory have conducted their joint affairs in the past 25 years also supports the view that the W. T. A. is in fact the agent of The A. W. R. The A. W. R. 's predecessor organization, the Western Association of Railway Executives (hereinafter "WARE") was originally formed in 1928, as a more or less informal association of Class I railroads in Western Territory, which were represented in that association by their chief executive officers. By 1932, WARE had developed a somewhat more formal organization, complete with salaried chairman and other paid staff personnel.

In 1932, the 32 members of WARE entered into an agreement, known commonly as the Western Commissioner Agreement, or the Western Commissioner Plan, which became effective on December 1, 1932.¹ The agreement recited that it was "desirable" "for the

¹ This agreement was not filed with the Interstate Commerce Commission until April 14, 1943.

mutual benefit of all railroads operating in the Western District" that a plan be adopted:

- "1. To advance their interests with relation to other forms of transportation; and for securing definite cooperation among them to the end that consideration may be given from the general standpoint of all railroads in the district, ---to all matters affecting;
2. All matters of general railroad policy;
3. Rates, both passenger and freight, traffic rules and practices;---. " (Emphasis added.)

It provided for the establishment of the position of Western 'Commissioner, " whose function was to act not only as Chairman of WARE, but also as an appellate tribunal for the settlement of disputes among western roads relating to matters of policy ("appeals" from WARE) and rate matters and traffic rules and practices ("appeals" from a sub-organization called Western Traffic Executive Committee which was the predecessor of the Western Traffic Association). WARE thus asserted jurisdiction over the organization and functions of the joint rate-making "facility" of the western roads, W. T. E. C. , which included non-members of the WARE.

Some time prior to April 9, 1943, the Department of Justice of the United States commenced its investigation into the organization of railroads in this country which led to the filing of its complaint, in 1944, in United States v. The Association of American Railroads, et al. , Civil Action No. 246 in the United States District Court for the District of Nebraska, Lincoln Division; the so-called "Lincoln Case". On April 9, 1943, after the existence of the Western Commissioner Agreement was brought to its attention, the Department of Justice requested a copy of the Agreement. Thereafter, on April 23, 1943, the parties to the Agreement stated that they had adopted an amendment thereto, which purported to

cancel it. The Government claimed in the suit, however, that the parties to the Agreement had publicly asserted their intention to continue those practices in the future, and that the practices inaugurated under the Agreement were actually continued.

On June 17, 1948, Congress enacted the so-called Reed-Bulwinkle Bill to give immunity from antitrust actions, such as the Lincoln case, arising out of the joint rate-making activities of rail and other common carriers. The Act, in sum, empowered the Interstate Commerce Commission to approve agreements among two or more common carriers, relative to the consideration, initiation or establishment of joint rates, fares and charges, and to exempt the parties to such agreements from the operation of the antitrust laws.

In the Fall of 1948, also shortly after the enactment of the Reed-Bulwinkle Act, the Western Association of Railway Executives merged with The Association of Western Railways. Prior to that time The Association of Western Railways had been an unincorporated association of western railways the sole concern of which was labor management relations. After the merger of 1948, the new A. W. R. assumed all of the functions of the Western Association of Railway Executives, and, in addition, the labor relations functions of the old A. W. R.

At about the same time the Western Traffic Association was organized as a successor to the Western Traffic Executive Committee and submitted its Articles of Organization and Procedure to the Interstate Commerce Commission for approval pursuant to that Act. The Western Traffic Association was represented before the Commission in that proceeding by two full-time employees of The A. W. R. Neither they nor The A. W. R. received any compensation from W. T. A. for their efforts in its behalf. The Interstate Commerce Commission, in its report and order approving the Western Traffic Association Agreement, observed that "The agreement continues in form and substance the organizations and procedures as they

at present exist in this area." (Emphasis added).

Thus, except for the change in name, there is no essential difference between the old WARE and the present A. W. R. (except for the addition of the labor relations function), or between the old W. T. E. C. and the present W. T. A. The fact that there was no change in the status of the western roads joint rate-making organization as an agency of their policy-making organization is borne out not only by The A. W. R.'s own statement, previously quoted, that it "affords means for handling, and supervises joint facilities of western lines which handle, ---adjustment and publication of rates and related matters...", but also by the statement of The A. W. R.'s auditor, in his deposition on written interrogatories, that there is no difference between the present method of financing the functions of The A. W. R. and W. T. A., on the one hand, and the methods used for financing the functions of the WARE and W. T. E. C. on the other.

II. The Association of Western Railways Is
Doing Business in The District of Columbia.

A. The Western Traffic Association

The Western Traffic Association has an office in the District of Columbia at 711 - 14th Street, Northwest, Washington 5, which is listed in the Washington Metropolitan Area Telephone Directory as "Western Traffic Assn exctv comm 711 14th NW - Dist 7-1137". Mr. L. Hill, Assistant to the Chairman of the Western Traffic Association is in charge of this office, which also employs a secretary to Mr. Hill, a clerk, and a typist clerk.

B. Activities of the A. W. R. Itself

The answers of The A. W. R. to interrogatories directed to it by Plaintiffs, show that employees of The A. W. R. were in the District of Columbia on the business of The A. W. R. a total of 1535 man-days or

over four man-years, in the five calendar years, 1950-1954,² and a total of 328 man-days or almost one man-year in 1954 alone. The total number of business visits of each of the personnel of The A. W. R. for the five-year period, as well as for the year 1954, are as follows:

	1950-1954 (inclusive)	1954 (only)
*Daniel P. Loomis Chairman, A. W. R.	48	2
O. E. Sobota Secretary to Mr. Loomis	34	1
*Joseph H. Hays Counsel	165	28
*Amos M. Mathews Attorney	124	44
*James W. Nisbet Attorney	195	38
*Ed White Attorney	43	11
*J. D. Feeney, Jr. Attorney	210	70
R. J. Bernard Attorney	7	7
Lyle H. Boren Special Representative	180	38

² There is no question but that all of the visits to the District of Columbia, by all personnel, except Mr. Loomis, were on the business of The A. W. R. As to him, there is a question as to 18 of his 49 visits during the five-year period, which The A. W. R. placed in the following categories, "Meetings, YMCA Transportation Dept. Committee", "Lectures, Rail Transportation Institute, American University", "Meeting, Labor Law Committee, American Bar Association", "Meeting, Labor-Management Committee of Man-power Policy Committee, Office of Defense Mobilization", "Meeting, Presidents Committee on Employment of Physically Handicapped",

	- 142 - <u>1950-1954 (inclusive)</u>	<u>1954 (only)</u>
*Chester K. Smith Research Engineer	8	0
*Frank E. Haas Special Representative	169	34
Frank J. Stanton Secretary to J. H. Hays & Chief Clerk, A. W. R. Law Dept.	75	10
*A. F. Hucksold Auditor, A. W. R.	5	5
*H. M. Sims Director, Public Relations Dept.	23	0
*P. D. Shoemaker Assistant to Director P. R. Dept.	238	37
T. J. Kienlen, Asst. to Dir., P. R. Department	4	0
Z. G. Hopkins, Asst. to Dir., P. R. Department	4	0
*W. W. Abbey, Asst. to Dir., P. R. Department	1	1
*J. G. Pate Asst. to Director P. R. Department	2	2
Total	<u>1,535</u>	<u>328</u>

2 (continued)

"Meeting of U.S. Chamber of Commerce Labor Committee". Comparison of the figures for Mr. Loomis with those given for his secretary, O. E. Sobota, whom I believe to be a full time employee of The A. W. R., reveals that Mr. Sobota accompanied Mr. Loomis to this District on all except one of the Loomis visits in the above-named categories. Since I do not believe that Mr. Sobota, an A. W. R. employee, would have accompanied Mr. Loomis if these visits were not on A. W. R. business, I believe all but one of Mr. Loomis' visits to have been on A. W. R. business.

*Indicates known "principal personnel".

The bulk of these visits by the "principal personnel" of The A. W. R. related to appearances before committees of Congress, Federal administrative agencies, mainly the Interstate Commerce Commission, and courts, and to meetings of the Association of American Railroads, or its various suborganizations. In this connection I consider it relevant to point out that, unlike individual railroads, The A. W. R. is under no legal compulsion to appear before the Interstate Commerce Commission. I am informed and believe that, except insofar as it is involved in this suit, The A. W. R. has been represented by its personnel, in their numerous visits to the District of Columbia since January 1, 1950, in connection with appearances before Congress, courts and administrative agencies, purely as a part of the service which it voluntarily performs for its member railroads, and not under legal compulsion.

I am informed and believe that many of the visits of the employees of The A. W. R., enumerated above, were made for the purpose of furthering the conspiracy described in the complaint. For example:

a) During the course of the proceedings before the Interstate Commerce Commission known as Application of Riss & Company, Inc., MC-200 (Sub-No. 84), and specifically from November 26, 1951 through December 18, 1951, and from January 8 through January 30, 1952, The A. W. R. maintained and paid for Rooms 510 and 511 in the Raleigh Hotel in this District, and paid the food and telephone bills of its personnel, as well as agents of other defendants and others unknown to me, who occupied or otherwise made use of these rooms. Documents produced by The A. W. R. show that it paid a total of \$3,087.58 to the Raleigh Hotel for the use of its facilities during this period. The A. W. R. was reimbursed 50% of this amount by the eastern railroads. In a letter dated January 4, 1952, to Edgar V. Hill now Chairman of the Traffic Executive Association- Eastern Railroads, Joseph H. Hays, Counsel for The A. W. R. stated that, during the period November 26 - December

18, 1951, "a high percentage of the long distance calls (from the rooms at the Raleigh) were made by men from the east (i. e. , eastern railroads) in regard to obtaining intervention by various parties in interest situated in the East."

b) In his deposition taken in connection with this suit, Lewin W. Wickes, an attorney employed by the Pennsylvania Railroad testified that he had conceived the idea of drafting a bill restricting the permissible weight of explosives to be carried by any one truck to 5,000 pounds. This is the sort of bill described in the Complaint. Wickes stated that he proposed to Mr. Hays of The A. W. R., or to someone in his office, that such a bill be drafted, and that thereafter, sometime in 1952, Hays and Wickes met, at Hays' request, at the Mayflower Hotel in the District of Columbia. Wickes testified that Hays there showed him a "typescript" draft of the so-called "5,000 pound bill." After discussing it, they presented it to the head of the National Sheriff's Association, at his office in this District, and derived from him a promise to pass the bill along as a "suggestion" to members of his association. The bill was later reproduced and circulated in the periodical publication of that association.

c) During late 1952 and 1953, The A. W. R., Eastern Railroad Presidents Conference and the Association of Southeastern Railroads contributed \$25,000 for the incorporation, in this District, of the Farm Roads Foundation, with headquarters at 744 Jackson Place, N.W., Washington, D. C., and for the production and distribution by the Foundation of a film entitled "Highways and Byways - U.S.A." This film is plainly a propaganda film directed against large, intercity trucks such as those operated by the plaintiff. The three associations contributed an additional \$25,000 to the Farm Roads Foundation in 1954. The A. W. R. paid 42.11 per cent of the original \$125,000 contribution, and 43.29 per cent of the later contribution of \$25,000.

d) In addition to the above indications of direct participation by The A. W. R. in the conspiracy, in the District of Columbia, documents produced by various parties defendant in this suit establish that several other visits of A. W. R. employees to the District of Columbia were made, in whole or in part, directly to further the conspiracy complained of.

One of the primary purposes of The A. W. R., and particularly of its Law and Public Relations Departments, is to engage alone, and in concert with others, in opposing efforts by competing forms of transportation, particularly long-haul trucking, such as that performed by plaintiff, to expand their activities in any manner which would provide additional competition to railroads. As a matter of fact, Joseph H. Hays was originally employed by the Western Association of Railway Executives in or about 1934 as head of that Association's Law Department for the express purpose of employing his talents and the facilities of the Law Department in practices which would prevent the long-haul trucking industry from affording increased competition to his employers. These functions of the Law Department were so notorious among the members and employees of the Western Association of Railway Executives that it was popularly known as the "highway department".

Some idea of the scope and importance to the W.A.R.E. of Mr. Hays' anti-trucking activities may be derived from the report of the so-called "Wheeler Committee" of the United States Senate, on its investigations, in 1936, into activities of interstate railroads.³

The Wheeler Committee's report described Mr. Hays as "a prime mover in the railroads' campaign against the trucking industry"⁴

³ Additional Report of the Committee on Interstate Commerce pursuant to S. Res. 71 (74th Congress), Senate Report No. 26, Part 2, 77th Congress, 1st Session, U.S. Government Printing Office, 1941.

⁴ Id., at page 9.

and reports that the objective of the W.A.R.E., as stated in one of its own memoranda, was to "retard the growth of the truck industry" and to "definitely slow up the invasion by the truck into the long haul field."⁵ It reports in some detail the various techniques used by Mr. Hays in his efforts to retard the growth of the trucking industry while concealing the railroads' hand in those activities; for example, the use of previously existing organizations, such as Parent-Teacher Associations, automobile associations, chambers of commerce, etc., the formation of new "front" organizations, and the use of railroad employees and others, to advocate new state and local legislation restrictive of trucking and to instigate special enforcement of existing laws restrictive of trucking. Hays also arranged for the publication of false and misleading propaganda about the trucking industry without revealing the railroads' interest therein. The Wheeler Committee reported that "the results attained by Mr. Hays through 'deception', 'undercover' activities, work done 'in secrecy' and under the guise of other organizations were considered highly successful by the railroads."⁶

Mr. Hays testified in his deposition taken in connection with this action that there was no substantial change in the functions of his department as a result of the merger of the W.A.R.E. and the A. W. R. Further indication that his activities have not changed as a result of the transition from W.A.R.E. to The A. W. R. may be derived from the fact that during the taking of his deposition in connection with this case in August 1955, The Association of Western Railways filed a motion, which was later denied, in the District Court for the Northern District of Illinois requesting an order that the Hays' deposition be sealed and that all parties

⁵Id., at page 14

⁶Id., at page 18

and their counsel and officers be enjoined from disclosing to any person not directly interested in the action the testimony of Mr. Hays. In support of this motion Mr. Hays filed an affidavit which contained the statement that "he is general counsel for the Association of Western Railways and is actively engaged in promoting the welfare of that Association. His activities have earned for him the displeasure and dislike of the trucking industry and more particularly the American Trucking Association, of which Plaintiff is a member."

That the Public Relations Department of The A. W. R. is similarly deeply concerned with problems of highway competition is apparent merely from an examination of the names and the volume of the publications which have been issued by that department during the period covered by this suit. During this period, discovery by Plaintiff has revealed that the Public Relations Department issued 45 bulletins, headed "Information from the Western Railways Public Relations Office", which are concerned with highway transportation; 341 pages of "Reproductions" of pictures, news articles and editorials concerning highway transportation, and 19 issues of a publication entitled "Competitive Transportation". In addition, the Public Relations Department has issued literally hundreds of phonograph records and newspaper reproductions containing material adverse to the trucking industry, to persons throughout the United States.

It is apparent, from the foregoing facts, that one of the primary purposes of The A. W. R. is to restrict motor carrier competition with its members, and that, in their frequent and continuous visits to this District, the officers and employees of The A. W. R. devote considerable time to the furtherance of those activities. Their steady stream of visits, over the past five years, in aid of one of this defendant's most important functions, clearly leads to the conclusion that The A. W. R. is doing business in this District through the activities of its own personnel.

Moreover, The A. W. R. has itself established that the Western Traffic Association is its agent in this District. It admits, in its affidavit in support of the instant motion, that an agency relationship exists between it and the Western Traffic Association. The sworn statements of The A. W. R., made before this action drew its attention to their significance for purposes of service and venue, plainly show that The A. W. R. supervises Western Traffic Association's activities. It dominates and controls Western Traffic Association not only through its majority membership in Western Traffic Association and its clear control of Western Traffic Association's Executive Committee, but also through its complete command over that Association's funds. The fact that A. W. R. members pay over 87% of the expenses of the Western Traffic Association is further evidence of The A. W. R.'s dominant position in the relationship, as is the revealing history of the predecessors of these two organizations. All of these factors point clearly to the conclusion that the Western Traffic Association is the agent of The A. W. R.

/s/ A. Alvis Layne, Jr.

A. Alvis Layne, Jr.

Subscribed and sworn to before me this

6th day of October, 1955.

/s/ Velma P. Wheaton

Notary Public

My Commission expires November 14, 1959

(HEADING OMITTED) Civil Action No. 4056-54 Filed October 21, 1955

AFFIDAVIT

STATE OF ILLINOIS)
COUNTY OF COOK } SS

JOSEPH H. HAYS, being first duly sworn, deposes and says:

1. He is General Counsel of The Association of Western Railways, and, as such, is head of the Law Department of the Association.

2. On January 6, 1949, on behalf of The Association of Western Railways, he signed and thereafter caused to be filed a statement required by the Federal Regulation of Lobbying Act to be filed with the Clerk of the House of Representatives and with the Secretary of the Senate, such statement being known as "Form A report for the last quarter of 1948." Such report contained, among other things, the following statement of purposes of the Association:

"The principal purpose of this association is to deal with matters which are regional in character and which are of common concern to the railroads of the Western District. It affords means for handling, and supervises joint facilities of Western lines which handle, matters of policy, operating matters, the weighing and inspection of freight, promotion of freight and passenger traffic, adjustment and publication of rates and related matters, the handling of labor relations, public relations, and economic, legal, and transportation research and matters of similar character."

3. On April 13, 1950, he signed on behalf of The Association of Western Railways and thereafter caused to be filed a statement required as aforesaid with the Clerk and Secretary. In such statement he said in part in respect to the Association:

"For a detailed description of its business see the statement annexed to its Form A report for the last quarter of 1948 and the statement annexed to the Form A report of its predecessor organization, the Western Association of Railway Executives, for the

first quarter of the year 1948, both of which statements are, by reference, made a part of this and all future reports filed by this Association."

The Form A report for the first quarter of 1948, so referred to, contained a statement identical to that quoted in paragraph 2 hereof.

4. The statement quoted in paragraph 2 hereof that one of the purposes of the Association was handling "adjustment and publication of rates and related matters" was correct at the time it was made. However, the inclusion of that purpose in the general reference statement quoted in paragraph 3 hereof was inadvertent and incorrect. On December 15, 1949, the Articles of Organization and Procedure of Western Traffic Association became effective as approved by the Interstate Commerce Act, 49 U.S.C. 5b, in Western Traffic Association--Agreement, 276 I.C.C. 183. The Association of Western Railways is not now and never has been an organization approved by the Commission under section 5a and has never applied for approval under section 5a. Consequently, since December 15, 1949, The Association of Western Railways has had no power to deal with "adjustment and publication of rates and related matters" and in fact has not dealt with such matters since December 15, 1949. All such matters involving the members of The Association of Western Railways are handled by the Western Traffic Association or other organizations approved by the Commission under section 5a. The Association of Western Railways has no connection or relation whatsoever with the matters dealt with by the Western Traffic Association. Therefore the statement quoted in paragraph 2 hereof that one of the purposes of The Association of Western Railways is "adjustment and publication of rates and related matters" ought to have been deleted from the statement of purpose of The Association of Western Railways quoted in paragraph 3 hereof and will be deleted in future reports filed under the Lobbying Act.

5. The attorneys who are members of the Law Department

of the Association of Western Railways have never appeared on behalf of the Association in any case in court or in any proceeding before an administrative agency in the District of Columbia or elsewhere except in the instant case. Appearances entered by such attorneys in such proceedings always are and always have been on behalf of specifically named railroad companies which are parties in interest to the particular proceeding. On the occasions when the aforesaid attorneys have been in the District of Columbia in connection with court or administrative proceedings they have been there at all times on behalf of certain railroads and never on behalf of the Association except as to the instant case.

Further affiant saith not.

/s/ Joseph H. Hays

Joseph H. Hays

Subscribed and sworn to before
me this 20 day of October, 1955.

/s/ O. E. Sobota

Notary Public

(HEADING OMITTED) Civil Action No. 4056-54 Filed October 21, 1955

AFFIDAVIT

STATE OF ILLINOIS }
COUNTY OF COOK } SS

A. F. Huckshold, being first duly sworn deposes and says:

1. That he is the Auditor of The Association of Western Railways, and is in charge of the Accounting Department of said Association.

2. That as a part of his duties, he is in charge of keeping the accounts and financial records of the Western Traffic Association to the extent that such authority has been delegated to The Association of Western Railways by certain of the suborganizations of the Western Traffic Association, pursuant to Article V (Section 7), Article VI (Section 5), Article VII

(Section 5), Article XII (Section 4), and Article XIII (Section 4) of the Western Traffic Association Agreement, approved by the Interstate Commerce Commission, by order effective December 15, 1949.

3. That the designation of The Association of Western Railways as the agent to keep the accounts and financial records of certain suborganizations of the Western Traffic Association is set forth in the letters and resolutions copies of which are attached to this affidavit.

4. That the sole authority of his department is derived from the authority set forth above, and that the sole function of his department with respect to the Western Traffic Association is to maintain accounts and financial records, to act as custodian of the funds of certain of the suborganizations, and to make disbursements of funds as authorized by the appropriate official of each of the said suborganizations.

5. That neither he, nor anyone in his department, nor, to his knowledge or belief, any official of The Association of Western Railways has any authority to exercise, or exercises, any control over the financial affairs or policies of the Western Traffic Association, except the administrative control set forth above.

6. That The Association of Western Railways is not a profit-making organization; it charges to the recipients of services only the actual cost of such services.

7. That The Association of Western Railways Accounting Department performs accounting services for rail organizations other than the Western Traffic Association which are not a part of, or subject to the control of, The Association of Western Railways, and that it receives for such services only the actual cost of the services performed.

Further affiant saith not.

/s/ A. F. Hucksold

A. F. Hucksold

Subscribed and sworn to

before me this 20th day of
October, 1955.

/s/ Agnes M. Evans

Notary Public

My Commission expires July 25, 1958.

(HEADING OMITTED) Civil Action No. 4056-54 Filed October 21, 1955

AFFIDAVIT

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{ ss
)

H. C. Barron, being first duly sworn, deposes and says:

1. That he is, in addition to being the Chairman of the Executive Committee - Western Traffic Association, the Counsel for that organization.

2. That as Counsel, he is in charge of the legal affairs of said organization.

3. That Western Traffic Association has never authorized any attorney employed by The Association of Western Railways to represent Western Traffic Association in any judicial or administrative proceeding, nor has it been so represented.

4. That the functions of Western Traffic Association are those set forth in the Articles of Agreement approved by the Interstate Commerce Commission, effective December 15, 1949.

5. That the conduct of the affairs and the policies of Western Traffic Association, and of its members with respect to said organizations, are determined solely in accordance with Article II, Article III, Article V (Sections 4, 5, 8, 9 and 10), Article VI (Sections 3, 4, 6, 7, 8, 9, 10), Article VII (Sections 3, 4, 6, 7, 8, 9, 10, 11, 12), Article VIII (Sections 3, 4, 6, 7, 8), Article IX (Sections 3, 4, 6), Article X (Sections 3, 4, 6, 7, 8, 9), North Pacific Coast Freight Bureau (Sections 3, 4, 6, 7, 8, 9), Article XII (Sections 3, 4, 5, 6), Article XIII (Sections 3, 5, 6), Article XIV

(Sections 3, 5, 6), Article XV, and Article XVII of the Articles of Agreement of Western Traffic Association, and are not controlled, dominated, supervised, or influenced in any way by The Association of Western Railways.

6. The basis upon which the expenses arising from functions performed by Western Traffic Association are allocated to the members participating in such activities is determined solely in accordance with Article V (Sections 6(d) (2)(7), Article VI (Sections 5, 10(h)), Article VII (Sections 5, 9(h), 10(h), 11(h), 12(h), 13(h)), Article VIII (Section 5), Article IX (Section 5), Article X (Section 5), Article XI (Section 5), Article XII (Section 4), Article XIII (Section 4), and Article XIV (Section 4), and is not controlled, dictated, supervised, or otherwise influenced by The Association of Western Railways.

7. The sole function of The Association of Western Railways with respect to the financial affairs of the Western Traffic Association is to keep the accounts and financial records, act as custodian of funds, and make disbursements for certain suborganizations of Western Traffic Association to the extent that such authority has been conferred upon The Association of Western Railways under the parts of the Articles of Agreement set forth in paragraph 6 of this affidavit and is shown in the letters and resolutions of certain suborganizations, copies of which are attached hereto.

8. That the Accounting Department of The Association of Western Railways may disburse funds of Western Traffic Association only when authorized to do so by the appropriate official of the suborganization whose funds are affected.

9. That The Association of Western Railways is not an organization authorized under Section 5 A of the Interstate Commerce Act to engage or participate in any of the activities conducted by Western Traffic Association.

Further affiant saith not.

/s/ H. C. Barron

H. C. Barron

Subscribed and sworn to
before me this 20th day
of October, 1955.

/s/ Edward B. Furch

Notary Public

My Commission expires Mar. 31, 1960

(HEADING OMITTED) Civil Action No. 4056-54 Filed November 7, 1955

ORDER

Defendant (2) The Association of Western Railways having moved to quash the return of service of summons and to dismiss the action for improper venue; and said motions having duly come on to be heard before this Court on the 31st day of October, 1955; and after duly considering said motions, the pleadings, affidavits in support of and in opposition to said motions, defendants' answers to interrogatories, depositions, and the memoranda of the parties, and having heard oral argument thereon, the Court, without passing on the questions raised by the motions to dismiss for improper venue, having found that neither Western Traffic Association nor Paul D. Shoemaker, to each of whom summons was delivered, are officers or agents of the defendant within the meaning of Rule 4(d)(3), Federal Rules of Civil Procedure, it is, this _____ day of November, 1955,

ORDERED, that each of the returns of service of summons upon defendant (2) The Association of Western Railways be and the same hereby are quashed and this action, with respect to said defendant, be and the

same hereby is dismissed.

/s/ H. A. Schwenhaut
United States District Judge

Order approved:

/s/ H. Charles Ephraim
Attorney for the plaintiff,
Riss & Company, Inc.

(HEADING OMITTED) Civil Action No. 4056-54

AMENDED ORDER QUASHING SERVICE AS TO
DEFENDANT (2) THE ASSOCIATION OF WESTERN
RAILWAYS

Whereas the Court entered an Order on November 4th, 1955
which read as follows:

ORDERED, that each of the returns of service of summons upon
defendant (2) The Association of Western Railways be and the same hereby
are quashed and this action, with respect to said defendant, be and the
same hereby is dismissed.

Whereas, as the Order shows, the Court made findings only with
respect to attempted service upon Defendant (2) The Association of Western
Railways by delivering summons to Western Traffic Association and Paul D.
Shoemaker;

Now therefore it is ORDERED that the ordering clause of the
Order of November 4th, 1955 be struck and the following be substituted
therefor;

ORDERED, that each of the returns of service of summons
upon defendant (2) The Association of Western Railways be and the same
hereby are quashed.

/s/ Schweinhaut
United States District Judge

March 22, 1956

(HEADING OMITTED) Civil Action No. 4056-54 Filed April 11, 1956

NOTICE

To: A. Alvis Layne, Jr.
H. Charles Ephraim
Pennsylvania Building
Washington 4, D. C.
Attorneys for Plaintiff

PLEASE TAKE NOTICE that the defendant, The Association of Western Railways, has this day filed with the Court the attached motion, affidavit, and memorandum of points and authorities in support of said motion. The rules of this Court require that if you oppose the granting of the said motion, you shall within five days from the date of service of the motion upon you, or such further time as said Court may grant, or, as parties to this suit may agree, file in reply with the Clerk of this Court a statement of the points and authorities upon which you rely, and serve a copy thereof upon counsel for the defendant, The Association of Western Railways.

April 11, 1956

/s/ Lawrence Cake

Lawrence Cake
1001 Connecticut Avenue, N. W.
Washington, D. C.

(HEADING OMITTED) Civil Action 4056-54 Filed April 11, 1956

MOTION TO DISMISS AND TO QUASH RETURN OF SERVICE

Now comes The Association of Western Railways, one of the defendants named in the above-entitled cause, and moves this Court to dismiss this action as to it and to quash the return of service for the following reasons:

I

The action is in the wrong district:

1. The Complaint alleges that this is an action arising under the antitrust laws of the United States.

2. Section 4 of the Clayton Act permits a person alleging injury caused by a violation of the antitrust laws to bring suit "in the district in which the defendant resides or is found or has an agent."

3. The Association of Western Railways does not reside in the District of Columbia; it is not found in the District of Columbia; and it has no agent in the District of Columbia.

4. As alleged in the Complaint, The Association of Western Railways is an unincorporated association of railroads in the United States, having its principal offices in Chicago, Illinois. In fact, said offices in Chicago, Illinois are the only offices of the Association.

II

The Court does not have personal jurisdiction over The Association of Western Railways:

1. Process was served upon The Association of Western Railways by delivering summons and a copy of the Complaint to Daniel P. Loomis in the District of Columbia.

2. The Association of Western Railways does not do business within the District of Columbia, and it is not present in the District for purposes of service of process.

Respectfully submitted,

THE ASSOCIATION OF WESTERN RAILWAYS

(Signatures omitted)

SIDLEY, AUSTIN, BURGESS
& SMITH
11 South LaSalle Street
Chicago, Illinois
Of Counsel

[CERTIFICATE OF SERVICE OMITTED]

(HEADING OMITTED) Civil Action No. 4056-54 Filed April 11, 1956

AFFIDAVIT

STATE OF ILLINOIS)

COUNTY OF COOK) SS

DANIEL P. LOOMIS, being first duly sworn, deposes and says:

1. He is the Chairman of The Association of Western Railways and, as such, is familiar with the organization and operations of that Association.

2. The Association of Western Railways is an unincorporated association. It has no written articles of organization of any kind.

3. The Association of Western Railways does not have any office in the District of Columbia. It does not have any officer, employee, or agent domiciled in the District of Columbia. It does not do business in the District of Columbia.

4. By an order dated November 4, 1955, the Honorable Henry A. Schweinhaut, Judge of this Court, found, contrary to the allegations of the Complaint, that Western Traffic Association is not an agent of The Association of Western Railways.

5. The only connection of The Association of Western Railways with the District of Columbia arises from the fact that from time to time employees of the Association have been present in the District of Columbia in connection with proceedings before federal administrative bodies, federal courts, and Congress. In addition, certain employees have, on occasion, attended meetings of the Association of American Railroads or of other organizations held in the District of Columbia.

6. He was served with summons addressed to The Association of Western Railways together with a copy of the Complaint in this action on March 22, 1956, while in the District of Columbia for the purpose of delivering a lecture to the Rail Transportation Institute, American University, and to attend the annual dinner of the Federation for Railway Progress.

Further affiant saith not.

/s/ Daniel P. Loomis

Subscribed and sworn to
before me this 10th day
of April, 1956.

/s/ O. E. Sobota
Notary Public

(HEADING OMITTED)

Civil Action 4056-54

Filed May 14, 1956

AFFIDAVIT OF H. CHARLES EPHRAIM IN OPPOSITION
TO MOTION OF DEFENDANT (2) THE ASSOCIATION OF
WESTERN RAILWAYS, FILED APRIL 11, 1956, TO DIS-
MISS AND TO QUASH RETURN OF SERVICE

CITY OF WASHINGTON)
DISTRICT OF COLUMBIA) ss

H. CHARLES EPHRAIM, being duly sworn, deposes and says
as follows:

I am one of the attorneys for the Plaintiff in this action and am
familiar with matters relevant to the motion of Defendant (2) The Associa-
tion of Western Railways (hereinafter "The A. W. R. "), filed April 11,
1956, to dismiss and to quash return of service.

A copy of the summons and complaint was served in the District
of Columbia upon Mr. Daniel P. Loomis, Chairman of The A. W. R., on
March 22, 1956. The A. W. R. has moved to dismiss the action as to it
and to quash return of service based upon the claim that venue does not
properly lie as to it in the District of Columbia. This affidavit is sub-
mitted in support of Plaintiff's points and authorities in opposition to
The A. W. R. 's motion. It is not the purpose of this affidavit to repeat
verbatim the facts set forth in the affidavit of A. Alvis Layne, Jr.,
dated October 6, 1955, filed in opposition to prior motions of The A. W. R.,
upon which the Plaintiff relies in its points and authorities. It is the
purpose of this affidavit briefly to summarize facts showing that The

A. W. R. is found in the District of Columbia.

The A. W. R. is an unincorporated association of Class I railroads in the Western District, with its headquarters in Chicago, Illinois. Each member railroad of The A. W. R. is represented in the Association by its president or chief executive officer. The A. W. R. has an Executive Committee consisting of 15 of these presidents and chief executive officers, the members of the Executive Committee serving for an indefinite term. The Executive Committee has authority over the administrative affairs of The A. W. R. and may act for the membership between meetings of the membership. The chief executive officer of The A. W. R. is its Chairman, Mr. Daniel P. Loomis, who presides at meetings and performs duties assigned to him by the Executive Committee. In addition to its Chairman, the principal personnel of The A. W. R., all full-time personnel, are:¹

J. F. Blair, General Manager
K. F. Welsh, Executive Secretary

LAW DEPARTMENT

J. H. Hays, Counsel
A. M. Mathews, Attorney
J. W. Nisbet, Attorney
Ed White, Attorney
J. D. Feeney, Attorney
C. K. Smith, Research Engineer
Frank E. Haas, Special
Representative

P. G. Otterbach, Secretary
A. F. Hucksold, Auditor
W. R. Nugent, Assistant Auditor
PUBLIC RELATIONS DEPARTMENT

H. M. Sims, Director
P. D. Shoemaker, Assistant to
Director
J. G. Pate, Assistant to
Director
A. M. Rung, Assistant to
Director
W. W. Abbey, Assistant to
Director

¹ This staff chart is directly taken from an affidavit of Mr. Loomis, dated December 6, 1954, in support of a prior motion. On his deposition on August 1 and 2, 1955, Mr. J. H. Hays, Counsel of the A. W. R., testified with regard to the Law Department that George Hester replaced C. K. Smith as Research Engineer, that Colonel John W. Wheeler acts as part-time Research Engineer, that three attorneys had been added, Robert Bernard, Robert Munsell and Kenneth Potter, and that a non-lawyer employee, Lyle H. Boren, had been added to confer with interested parties and discuss federal and state legislative problems.

The A. W. R. does not presently have any written charter, by-laws, constitution, articles, plan of organization, or statement of purposes. Among the principal purposes and activities of The A. W. R. are to advance the interests of its railroad members with relation to other forms of transportation through (1) representing those interests before administrative agencies, principally the Interstate Commerce Commission, regulating competing forms of transportation; (2) representing these interests before legislatures, state and federal; and (3) preparing, circulating, and promoting publicity concerning competing forms of transportation. The A. W. R. has, since combining with the Western Association of Railway Executives in 1948, filed reports with the Clerk of the United States House of Representatives under Public Law 601, 79th Congress, 2 U. S. C. , § 261 et seq., the Federal Lobbying Act. In its quarterly report for the fourth quarter of 1948, incorporated in all subsequent reports, the functions of The A. W. R. are described as follows: "The principal purpose of this association is to deal with matters which are regional in character and which are of common concern to the railroads of the Western District. It affords means for handling, and supervises joint facilities of western lines which handle, matters of policy, operating matters, the weighing and inspection of freight, promotion of freight and passenger traffic, adjustment and publication of rates and related matters, the handling of labor relations, public relations, and economic, legal and transportation research and matters of similar character."

In this action The A. W. R. states simply that its purpose is to serve the interests of its members and of other railroads operating in the Western District of the United States.

As seen, there are two standing departments of The A. W. R. , the Law Department and the Public Relations Department. The Law Department represents the interests of the railroads in The A. W. R. before administrative agencies, principally the Interstate Commerce Commission,

and in legislative matters, including those in the Congress of the United States. The Law Department is headed by Mr. Joseph H. Hays, a lawyer and lobbyist whose background is outlined in the affidavit of A. Alvis Layne, Jr. According to Mr. Hays' testimony on deposition in this action, all of the attorneys in the Law Department continuously and consistently handle cases before the Interstate Commerce Commission representing the interests of the members of The A. W. R. Of the 7 attorneys in the Law Department (aside from Mr. Hays), 4 are engaged almost full-time in the handling of matters before the Interstate Commerce Commission; 1 is engaged in handling matters before the Interstate Commerce Commission, the Civil Aeronautics Board, and other administrative agencies; 1 does clerical work and assists other attorneys; and 1 assists Mr. Hays. The Law Department's full-time Research Engineer is primarily concerned with research concerning highway transportation. The Law Department's part-time Research Engineer advises on factual questions dealing with engineering, aids and assists in research, and confers with persons concerning legislative matters.

The remaining staff members of the Law Department, Mr. Hays, Mr. Haas, and Mr. Boren, are all registered lobbyists for The A. W. R. under the Federal Lobbying Act. Mr. Hays and Mr. Haas have been registered lobbyists for The A. W. R. with the Congress of the United States since the merger of A. W. R. with Western Association of Railway Executives in 1948. Mr. Boren registered as a lobbyist with the Congress of the United States in behalf of The A. W. R. in February 1955, stating that he did not expect to spend more than three-fourth's of his time on federal legislative matters and that therefore three-fourth's of his salary, or \$697 per month, and three-fourth's of his expenses, or \$650 per month, could be attributed to federal legislative matters. During the first quarter of 1956, Mr. Haas reported a salary of \$377.92 and expenses of \$347.07, total \$724.99, for federal legislative work for The A. W. R. Mr. Boren reported for the first

quarter of 1956 \$2,620.64 in salary attributable to federal legislative efforts in behalf of The A. W. R.

The Public Relations Department of The A. W. R. is principally concerned with gathering, writing, reproducing, issuing and circulating information concerning competing transportation. During the period covered by the complaint in this action the Public Relations Department issued 45 separate bulletins headed "Information From the Western Railways Public Relations Office" all concerned with highway transportation; 241 pages of "reproductions" of pictures, news articles, and editorials concerning highway transportation, and 19 issues of a publication entitled "Competitive Transportation". In addition, the Public Relations Department has issued and circulated throughout the United States hundreds of phonograph records and newspaper reproductions containing material adverse to the trucking industry.

A substantial part of The A. W. R. 's activities are necessarily carried on in the District of Columbia. Its officers and personnel are continuously in the District of Columbia to further the interests of the members of The A. W. R. in connection with matters before Congress, matters before the Interstate Commerce Commission and other administrative agencies and courts, and matters of concern to the members of The A. W. R. in common with other railroads throughout the United States. In this connection the officers and staff employees of The A. W. R. were in the District of Columbia on its business a total of 1535 man-days or over four man-years, in the five calendar years 1950-1954, and a total of 328 man-days or almost one man-year in 1954 alone. The total number of business visits of each of the personnel of The A. W. R. for the five-year period, as well as for the year 1954, are as follows:

	1950-1954 (inclusive)	1954 (only)
Daniel P. Loomis Chairman, A. W. R.	48	2
O. E. Sobota Secretary to Mr. Loomis	34	1
Joseph H. Hays Counsel	165	23
Ames M. Mathews Attorney	124	44
James W. Nisbet Attorney	193	38
Ed White Attorney	43	11
J. D. Feeney, Jr. Attorney	210	70
E. J. Bernard Attorney	7	7
Lyle H. Boren Special Representative	180	38
Chester K. Smith Research Engineer	8	0
Frank E. Haas Special Representative	169	34
Frank J. Stanton Secretary to J. H. Hays & Chief Clerk A. W. R. Law Dept.	75	10
A. F. Hucksold Auditor, A. W. R.	5	5
H. M. Sims Director, Public Relations Dept.	23	0

	1950-1954 (inclusive)	1954 (only)
P. D. Shoemaker Assistant to Director Public Relations Dept.	238	37
T. J. Kienlen, Assistant to Director Public Relations Dept.	4	0
Z. G. Hopkins Assistant to Director Public Relations Dept.	4	0
W. W. Abbey Assistant to Director Public Relations Dept.	1	1
J. G. Pate Assistant to Director Public Relations Dept.	2	2
TOTAL	1,535	325

The A. W. R. stated in its answers to interrogatories that these visits were related primarily to appearances before Committees of Congress, federal administrative agencies, mainly the Interstate Commerce Commission, and courts, and to meetings of the Association of American Railroads and its various suborganizations. I am informed and believe that many of these visits of the officers and employees of The A. W. R. were made for the express purpose of furthering the conspiracy described in the complaint. For example:

a) During the course of the proceedings before the Interstate Commerce Commission known as Application of Riss & Company, Inc., HC-200 (Sub-No. 84), and specifically from November 26, 1951, through December 18, 1951, and from January 8 through January 30, 1952, The A. W. R. maintained and paid for Rooms 510 and 511 in the Raleigh Hotel in this District, and paid the food and telephone bills of its personnel, as well as agents of other defendants and others unknown to me, who occupied

or otherwise made use of these rooms. Documents produced by The A. W. R. show that it paid a total of \$3,087.58 to the Raleigh Hotel for the use of its facilities during this period. The A. W. R. was reimbursed 30% of this amount by the eastern railroads. In a letter dated January 4, 1952, to Edgar V. Hill, new Chairman of the Traffic Executive Association - Eastern Railroads, Joseph H. Hays, Counsel for The A. W. R. stated that, during the period November 26 - December 18, 1951, "a high percentage of the long distance calls (from the rooms at the Raleigh) were made by men from the east (i. e., eastern railroads) in regard to obtaining intervention by various parties in interest situated in the East. "

b) In his deposition taken in connection with this suit, Lewin W. Wickes, an attorney employed by the Pennsylvania Railroad, testified that he had conceived the idea of drafting a bill restricting the permissible weight of explosives to be carried by any one truck to 5,000 pounds. This is the sort of bill described in the Complaint. Mr. Wickes stated that he proposed to Mr. Hays of The A. W. R., or to someone in his office, that such a bill be drafted, and that thereafter, sometime in 1953, Hays and Wickes met, at Hays' request, at the Mayflower Hotel in the District of Columbia. Wickes testified that Hays there showed him a "typescript" draft of the so-called "5,000 pound bill". After discussing it, they presented it to the head of the National Sheriff's Association, at his office in this District, and derived from him a promise to pass the bill along as a "suggestion" to members of his association. The bill was later reproduced and circulated in the periodical publication of that association.

c) During late 1952 and 1953, The A. W. R., Eastern Railroad Presidents Conference and the Association of Southeastern Railroads contributed \$125,000 for the incorporation, in this District, of the Farm Roads Foundation, with headquarters at 744 Jackson Place, N. W., Washington, D. C., and for the production and distribution by the Foundation of a film entitled "Highways and Byways - U. S. A. " This film is plainly a propaganda

film directed against large, intercity trucks such as those operated by the Plaintiff. The three associations contributed an additional \$25,000 to the Farm Roads Foundation in 1954. The A. W. R. paid 42.11 per cent of the original \$125,000 contribution, and 43.29 per cent of the later contribution of \$25,000.

d) In addition to the above indications of direct participation by The A. W. R. in the conspiracy, in the District of Columbia, documents produced by various parties defendant in this suit establish that several other visits of A. W. R. employees to the District of Columbia were made, in whole or in part, directly to further the conspiracy complained of.

/s/ H. Charles Ephraim
H. Charles Ephraim

Subscribed and sworn to before me this

14th day of May, 1956.

/s/ Mary H. Ogden
Notary Public

My Commission expires July 31, 1960

(HEADING OMITTED) Civil Action 4056-54 Filed July 25, 1956

MOTION FOR LEAVE TO SUPPLEMENT COMPLAINT

Plaintiff hereby moves the Court for an order granting leave to supplement the complaint herein by:

(1) adding the following paragraph as paragraph 18 thereof,

"18. On or about Oct. 20, 1955, the railroad defendants herein caused to be submitted to traffic officials employed by the Department of Defense a uniform, unpublished rate quotation, by and on behalf of the railroads engaged in carrying explosives traffic in competition with the plaintiff. Said quotation established railroad rates for carrying explosive shipments totalling more than 50,000 pounds which were nearly forty per cent below the general level of such rates prevailing for the previous eight

years. Said uniform and concerted rate reduction, which took effect on or about November 20, 1955, was intended to exclude the plaintiff from the business of carrying such shipments of explosives and has now had that effect with respect to the principal points served by the plaintiff. Said quotation was made for the purpose of effectuating one of the principal objects of the conspiracy charged herein, to wit, the elimination of the plaintiff as a competitor with the railroads for explosives traffic and has substantially injured the plaintiff's business. The Interstate Commerce Commission has no jurisdiction over said quotation and plaintiff will continue to suffer substantial and irreparable injury from said illegal quotation until and unless the acceptance of traffic pursuant thereto is enjoined by this Court. "

2) adding the following prayer for relief as paragraph 6, under the heading "Wherefore, plaintiff demands",

"6. Injunctive relief enjoining the defendant railroads from accepting traffic pursuant to the illegal quotation described in paragraph 18 hereof. "

(Signatures omitted)

(HEADING OMITTED) Civil Action 4056-54 Filed July 25, 1956

MEMORANDUM IN SUPPORT OF PLAINTIFF'S
MOTION FOR LEAVE TO SUPPLEMENT ITS
COMPLAINT

The complaint charged a conspiracy to injure the plaintiff's business which would continue until and unless enjoined by this Court. No injunction has been issued and the plaintiff now alleges that since the complaint was filed, the defendants have achieved one of the main objects of the alleged conspiracy by concerted action which occurred on October 20, 1955. Plaintiff will rely upon evidence of that conduct to prove both the existence of the conspiracy alleged in the complaint and its impact on

plaintiff's business. The authority for granting the plaintiff's motion to supplement its complaint as set forth in its motion is contained in Rule 15(d) of the Federal Rules of Civil Procedure, which reads as follows:

"A. Supplemental Pleadings. Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit him to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. If the court deems it advisable that the adverse party plead thereto, it shall so order, specifying the time therefor."

Respectfully submitted,

(Signatures omitted)

(HEADING OMITTED) Civil Action 4056-54 Filed November 16, 1956

PLAINTIFF'S REPLY TO DEFENDANTS' OBJECTIONS
TO MOTION FOR LEAVE TO SUPPLEMENT COMPLAINT

The objections to plaintiff's motion are (1) that the proposed supplement states a new cause of action; (2) that it does not state a cause of action; (3) that it asks for new and different relief which may not be granted, and (4) that it asks for no relief not already included in the existing prayer. In view of these contradictory arguments, it will be useful first to recapitulate what the effect of this supplemental pleading is upon the existing cause of action.

- I. THE PROPOSED SUPPLEMENT IS NOTICE THAT PROOF OF A SPECIFIC CONCERTED CUT IN EXPLOSIVE RATES OCCURRING AFTER THE COMPLAINT WAS FILED WILL BE OFFERED IN SUPPORT OF THE ALLEGATIONS OF THAT COMPLAINT.

The existing complaint charges that the defendants conspired to injure the plaintiff's business by a defamatory public relations campaign. The overt acts alleged included mass intervention in ICC hearings intended to restrict plaintiff's authority to carry explosives with an attendant public

circulation of prejudicial material evolved in those hearings and organized efforts to enact local legislation which would unreasonably restrict the plaintiff's explosive business. The main object of the conspiracy was to eliminate plaintiff's competition with the defendant railroads as a long-distance hauler of explosives. The complaint did not charge that the defendants had engaged in blanket rate cuts as a means of injuring the plaintiff as they had not then attacked the plaintiff's business by that particular means. Joint rate-making was not a matter about which the plaintiff could then complain as it had not then been used to injure plaintiff.

In the course of discovery proceedings the plaintiff has consistently maintained that the defendants' concerted quotation of unpublished tariffs pursuant to Section 22 of the Interstate Commerce Act, 49 U.S.C.A. sec. 22, was relevant evidence of their alleged illegal intent. The defendants have opposed discovery of such evidence upon the ground that the complaint alleged no injury from such quotations. The plaintiff's claim of relevancy was not then based upon a claim of injury from those activities, but upon the ground that the mere concerted quotation of Section 22 rates, which that Section expressly permits to be discriminatory, and which are not subject to the suspension procedures of Section 15 of the Interstate Commerce Act, was not sanctioned by the Reed-Bulwinkle Act (Interstate Commerce Act, Section 5a, 49 U.S.C.A. sec. 5b).

It has now become unnecessary to resolve the issue raised in the discovery proceeding as to the scope of the anti-trust exemption created by the Reed-Bulwinkle Act, because the defendants are now charged with an actual injurious use of their power to quote Section 22 rates by concerted action which violates the Sherman Act. We do not understand that any defendant contends that the railroads have been authorized by the Interstate Commerce Act or the Interstate Commerce Commission to join forces against truck competition by a uniform rate cut which is intended to eliminate such competition, when made pursuant to a conspiracy aimed at

destruction of a trucking competitor's business. Yet that is the charge presented by the complaint, as supplemented.

The proposed supplemental paragraph does not purport to state a cause of action by itself. There is no claim by the plaintiff that the blanket rate cut on the routes principally served by Riss on November 20, 1955, was, by itself, a basis for the award of damages or equitable relief. The claim is (1) that damages in addition to the damages sustained when the complaint was filed were inflicted when the alleged object of the conspiracy was finally attained by that particular means, and (2) that specific relief against the acts alleged in the original complaint would have no significance unless the additional acts which the defendants used to accomplish the purpose of the conspiracy are enjoined. The sole function of the proposed supplement is to afford specific notice of that claim pursuant to Rule 15(d) of the Federal Rules of Civil Procedure.

The evidence relied upon to prove the November 20 rate cut would be admissible with or without the proposed supplement. The conspiracy to eliminate Riss as a competitor of the railroads for explosives traffic was alleged to be a continuing one and equitable relief was sought against it, including whatever relief the trial court might find to be necessary and appropriate at the time of trial. In a suit alleging a continuing conspiracy the defendants may not escape the impact of their relevant conduct after the suit was filed by relying upon rules of evidence applicable to a static cause of action.¹ The trial court in this case has no more

¹See, for example, Durkin v. Shore, 112 F. Supp. 375 (E. D. Tenn., 1953); United States v. Griffith Amusement Co., 94 F. Supp. 747 (W. D. Okla., 1950); United States v. Standard Oil Co., 78 F. Supp. 850, 853 (S. D. Cal., 1948), aff'd 337 U.S. 293; Fleming v. Knudson & Mercer, 159 F. 2nd 212 (CCA 7, 1947); Civil Aeronautics Board v. Canadian Colonial Airways, Inc., 41 F. Supp. 1006 (S. D., N. Y., 1941); Cf., Savannah Theatre Co. v. Lucas, 8 F.R. Serv. 34.12, Case 2 (S. D. Ga., 1944) in which the Court denied leave to file a supplemental complaint after the case had been set for trial, based on continuation of an alleged antitrust conspiracy beyond the date of the original complaint. "(T)his decision seems unnecessarily restrictive and not sound." 3 Moore's Federal Practice, 858, fn. 7.

discretion to exclude evidence of the achievement of the object of the conspiracy than it would to exclude evidence of the origin of the conspiracy. In either case the separation in point of time from the date the complaint was filed does not make the evidence irrelevant.

The defendants' suggestion that the matters contained in the proposed supplemental pleading should be litigated in a new suit is therefore without merit. A new suit would mean refileing the entire complaint and would require that the proof so far assembled by the discovery procedure had in this suit be re-assembled and presented in that suit. The avoidance of any such duplication is one obvious purpose of a supplemental pleading.

The defendants' obvious preference for separate trials in which the evidence of the discriminatory rate cut would be divorced from the evidence of their prior discriminatory conduct against the plaintiff, does not entitle them to such a separation. They have not been charged with rate-cutting as an independent violation of the Sherman Act. What they did on November 20, 1955, is claimed to be illegal because it represented the culmination of their prior illegal acts. The charge is a continuing conspiracy of which the rate cut was a significant overt act, and the defendants' will have to address themselves at trial to that charge and to that overt act regardless of what further pleadings they or the plaintiff may file.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RISS & COMPANY, INC.,	)	[Filed January 28, 1958]
Plaintiff,	)	
v.	)	CIVIL ACTION
ASSOCIATION OF AMERICAN RAILROADS,	)	NO. 4056-54
<u>et al.</u> ,	)	
Defendants.	)	

ORDER GRANTING LEAVE TO SUPPLEMENT COMPLAINT

Plaintiff having moved the Court for leave to supplement its complaint pursuant to Rule 15(d) of the Federal Rules of Civil Procedure, the defendants having objected thereto, and arguments having been heard upon said motion and the objections thereto:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the defendants' objections are overruled and leave is hereby granted to supplement the complaint herein by adding as Paragraph 18 thereof the following allegations:

"18. On or about Oct. 20, 1955, the railroad defendants herein caused to be submitted to traffic officials employed by the Department of Defense a uniform, unpublished rate quotation, by and on behalf of the railroads engaged in carrying explosives traffic in competition with the plaintiff. Said quotation established railroad rates for carrying explosive shipments totalling more than 50,000 pounds which were nearly forty percent below the general level of such rates prevailing for the previous eight years. Said uniform and concerted rate reduction, which took effect on or about November 20, 1955, was intended to exclude the plaintiff from the business of carrying such shipments of explosives and has had that effect with respect to the principal points served by the plaintiff. Said quotation was made for the purpose of effectuating one of the principal objects of the conspiracy charged herein, to wit, the elimination of the plaintiff as a competitor with the railroads for explosives traffic and has substantially injured the plaintiff's business. The Interstate Commerce

Commission has no jurisdiction over said quotation and plaintiff will continue to suffer substantial and irreparable injury from said illegal quotation until and unless the acceptance of traffic pursuant thereto is enjoined by this Court."

and by adding to the prayer for injunctive relief the following request:

"6. Injunctive relief enjoining the defendant railroads from accepting traffic pursuant to the illegal quotation described in paragraph 18 hereof."

Plaintiff is hereby allowed five days in which to serve upon the defendants a copy of the complaint as supplemented, and defendants are hereby allowed fifteen days in which to answer, or otherwise plead, to the foregoing supplementary allegation and prayer for relief, and to file counterclaims based upon Plaintiff's Section 22 rate practices; and the leave to file such counterclaims shall be without prejudice to the right of Plaintiff to file such motions or responsive pleadings with respect to said counterclaims as it deems necessary.

IT IS FURTHER ORDERED, that defendants are hereby granted leave to file appropriate motions, or amendments to such pleadings, as may be filed herein responsive to the foregoing supplementary allegation and prayer for relief, based upon the decision of the United States Court of Appeals for the District of Columbia Circuit in Atchison, Topeka and Santa Fe Railway Co., et al., v. Aircoach Transport Association, Inc., No. 14,053, et al., which proceeding is now pending before that Court, within fifteen days of the announcement of the decision by the said Court of Appeals therein; provided, however, that the leave hereby granted defendants to file such motions or amendments shall be without prejudice to Plaintiff's right to file with respect thereto, such memoranda, motions or amendments as it deems necessary.

/s/ John Sirica

UNITED STATES DISTRICT JUDGE

Entered this
28th day of January, 1958.

Seen: /s/ Paul F. McArdle
Attorney for all Defendants
for purposes of this Order.

(HEADING OMITTED) Civil Action No. 4056-54 Filed January 31, 1958

COMPLAINT AS SUPPLEMENTED

1. This case arises under the anti-trust laws of the United States, and more particularly under Sections 1 and 2 of the Act of Congress of July 2, 1890 entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" (c. 647, 26 Stat. 209), as amended, commonly known as the Sherman Act (15 U.S.C. §§1, 2). Jurisdiction is conferred upon this Court by Section 7 of the Sherman Act (26 Stat. 210, 28 Stat. 570), and by Sections 4, 12 and 16 of the Act of October 15, 1914 (38 Stat. 731, 736, 737), commonly known as the Clayton Act. (15 U.S.C. §§15, 22 and 26).

2. The plaintiff, Riss & Company, Inc., hereinafter referred to as "Riss", is a corporation organized and existing under the laws of the State of Colorado, with its principal office in Kansas City, Missouri. Riss is a common carrier of property by motor vehicle in interstate or foreign commerce. Riss holds certificates of public convenience and necessity and other operating authority issued by the Interstate Commerce Act, as amended (49 U.S.C. §301 et seq.), authorizing the transportation of property between points, over routes, and within territories in twenty-two States and the District of Columbia. Riss is and has been at all times material hereto engaged in such transportation, including transportation of property in interstate or foreign commerce to and from and within the District of Columbia.

3. Defendant Association of American Railroads, hereinafter referred to as "AAR", is an unincorporated association having its principal offices in the Transportation Building, Washington 6, D. C. The membership of AAR includes common carriers by railroad in interstate or foreign commerce. All defendant railroads belong to AAR. AAR operates under the supervision and direction of a Board of Directors, composed of officers and employees of defendant railroads and of other railroads. AAR has a large organization and staff of paid personnel. The functions and operations of AAR are divided into departments and bureaus,

each under the direct supervision and control of a vice-president of AAR. One such department is the Public Relations Department. There are, in addition, subdivisions of AAR under the direct control of the Vice President-Assistant to the President of AAR. Included in this group are the Committee on Motor Transportation and a section entitled "Competitive Transportation Research". The expenses of AAR, including the salaries of its officers and employees, are paid through assessments levied upon member railroads in accordance with each member's operating revenue. AAR regularly transacts business in the District of Columbia and a substantial part of the acts of AAR, pursuant to the unlawful agreement conspiracy, combination and attempt to restrain and monopolize herein alleged were performed in the District of Columbia.

4. Defendant The Association of Western Railways, hereinafter referred to as "Western Railways", is an unincorporated association having its principal offices in the Union Station Building, Chicago, Illinois. The membership of Western Railways includes common carriers by railroad in interstate or foreign commerce in the Western District of the United States, which includes that portion of the United States west of the Mississippi River and Wisconsin and the western part of Illinois. Defendant railroads whose system of operations extends within the Western District of the United States belong to Western Railways. Western Railways operates under the supervision and direction of a chairman and has a staff of paid personnel. Western Railways is composed of several permanent departments, including a Law Department, a Public Relations Department and a department or subdivision operating under the title "Western Traffic Association." Western Railways pays the staff and maintains an office in the Sheraton Building in the District of Columbia. The expenses of Western Railways, including the salaries of its officers and employees, are paid through assessments levied upon member railroads in accordance with each member's operating revenue. Western Railways regularly transacts business in the District of Columbia and a substantial part of the acts of Western Railways pursuant to the unlawful agreement, conspiracy, combination and attempt to restrain and monopolize herein alleged were performed in the District of Columbia.

5. Defendant Traffic Executive Association - Eastern Railroads, hereinafter referred to as "Eastern Railroads", is an unincorporated association having its principal offices at One Park Avenue, New York 16, New York. The membership of Eastern Railroads includes common carriers by railroad in interstate or foreign commerce in the Eastern District of the United States, which includes that portion of the United States lying generally east of the Mississippi River and north of the Ohio and Potomac Rivers. Defendant railroads whose system of operations extends within the Eastern District of the United States belong to Eastern Railroads. Eastern Railroads operates under the supervision and direction of a Chairman and maintains a staff of paid personnel. Eastern Railroads has various bureaus and committees, including a Motor Carrier Bureau. Eastern Railroads pays the staff and maintains an office in the Bond Building in the District of Columbia. The expenses of Eastern Railroads, including the salaries of its officers and employees, are paid through assessments levied upon member railroads in accordance with each member's track mileage. Eastern Railroads regularly transacts business in the District of Columbia and a substantial part of the acts of Eastern Railroads pursuant to the unlawful agreement, conspiracy, combination and attempt to restrain and monopolize herein alleged were performed in the District of Columbia.

6. Defendant Eastern Railroads Presidents Conference, hereinafter referred to as "Presidents Conference", is an unincorporated association having its principal offices at 143 Liberty Street, New York 9, New York. The membership of Presidents Conference includes, as official representatives, the President or other chief executive officer of the member railroads of defendant Eastern Railroads. Presidents Conference is operated under the supervision and direction of a Chairman and has a staff of paid personnel. Presidents Conference is composed of committees and sub-committees, including an Executive Committee, and a Bureau of Information. The expenses of Presidents Conference, including the salaries of its officers and employees, are paid through assessments levied upon the railroads whose executive officers are members of Presidents Conference, the amount being in accordance with each railroad's trackage. Presidents Conference

regularly transacts business in the District of Columbia and its publicity agent, Carl Byoir and Associates, Inc., a defendant herein, maintains an office and staff in the National Press Building in the District of Columbia. A substantial part of the acts of Presidents Conference pursuant to the unlawful agreement, conspiracy, combination and attempt to restrain and monopolize herein alleged were performed by it and through its agent in the District of Columbia.

7. Defendant Carl Byoir and Associates, Inc., hereinafter referred to as "Byoir", is a corporation organized and existing under the laws of the State of New York having its principal offices at 10 East 40th Street, New York, New York. Byoir is engaged in business as a publicity agent. Byoir acts as publicity agent, and has so acted during all times material hereto, for defendant Presidents Conference. Byoir maintains an office in the National Press Building in the District of Columbia. Byoir regularly transacts business in the District of Columbia and a substantial part of the acts of Byoir pursuant to the unlawful agreement, conspiracy, combination and attempt to restrain and monopolize herein alleged were performed in the District of Columbia.

8. The following common carriers by railroad in interstate or foreign commerce in the United States are hereby made defendants; there defendants are hereinafter referred to collectively as "defendant railroads", each of defendant railroads regularly transacts business in the District of Columbia:

- (A) # (6);
- (B) # (7) Atlantic Coast Line Railroad Company, a corporation organized and existing under the laws of the State of Virginia, having its principal offices in New York, New York;
- (C) Those railroads known as "Santa Fe Lines", which are:
 - (1) # (8) The Atchison, Topeka and Santa Fe Railway, a corporation organized and existing under the laws of the State of Kansas, having its principal offices in Chicago, Illinois;

- (2) #(9) Gulf, Colorado & Santa Fe Railway Company, a corporation organized and existing under the laws of the State of Texas, having its principal offices in Galveston, Texas;
- (3) #(10) Panhandle & Santa Fe Railway Company, a corporation organized and existing under the laws of the State of Texas, having its principal offices in Amarillo, Texas;
- (D) #(11) Baltimore & Ohio Railroad Co., a corporation organized and existing under the laws of the State of Maryland, having its principal offices in Baltimore, Maryland;
- (E) #(12) Boston & Maine Railroad, a corporation organized and existing under the laws of the State of New York, having its principal offices in Boston, Massachusetts;
- (F) #(13);
- (G) #(14) Central Vermont Railway, Inc., a corporation organized and existing under the laws of the State of Vermont, having its principal offices in St. Albans, Vermont;
- (H) #(15) The Chesapeake & Ohio Railway Company, a corporation organized and existing under the laws of the State of Virginia, having its principal offices in Cleveland, Ohio;
- (I) Those railroads known as "The Burlington Lines", which are:
 - (1) #(16) Chicago, Burlington & Quincy Railroad Company, a corporation organized and existing under the laws of the State of Illinois, having its principal offices in Chicago, Illinois;
 - (2) #(17) The Colorado and Southern Railway Company, a corporation organized and existing under the laws

of the State of Colorado, having its principal offices in Denver, Colorado;

- (3) #(18) Fort Worth and Denver Railway Company, a corporation organized and existing under the laws of the State of Texas, having its principal offices in Fort Worth, Texas;
- (J) #(19) Chicago Great Western Railway Company, a corporation organized and existing under the laws of the State of Illinois, having its principal offices in Chicago, Illinois;
- (K) #(20) Chicago, Indianapolis and Louisville Railway Company, a corporation organized and existing under the laws of the State of Indiana, having its principal offices in Chicago, Illinois;
- (L) #(21) Chicago, Milwaukee, St. Paul and Pacific Railroad Company, a corporation organized and existing under the laws of the State of Wisconsin, having its principal offices in Chicago, Illinois;
- (M) #(22) Chicago and North Western Railway Company, a corporation organized and existing under the laws of the State of Wisconsin, having its principal offices in Chicago, Illinois;
- (N) #(23) Chicago, Rock Island and Pacific Railroad Co., a corporation organized and existing under the laws of the State of Delaware, having its principal offices in Chicago, Illinois;
- (O) # (24);
- (P) # (25);
- (Q) # (26) The Denver & Rio Grande Western Railroad Company, a corporation organized and existing under the laws of the State of Delaware, having its principal offices in Denver, Colorado;

- (R) #(27) Duluth, South Shore and Atlantic Railroad Company (P. L. Solether, Trustee), a corporation organized and existing under the laws of the State of Minnesota, having its principal offices in Minneapolis, Minnesota;
- (S) # (28);
- (T) # (29) Erie Railroad Company, a corporation organized and existing under the laws of the State of New York, having its principal offices in Cleveland, Ohio;
- (U) #(30) Grand Trunk Western Railroad Company, a corporation organized and existing under the laws of the States of Michigan and Indiana, having its principal offices in Detroit, Michigan;
- (V) # (31) Great Northern Railway Company, a corporation organized and existing under the laws of the State of Minnesota, having its principal offices in St. Paul, Minnesota;
- (W) # (32) Gulf, Mobile & Ohio Railroad Company, a corporation organized and existing under the laws of the State of Mississippi, having its principal offices in Mobile, Alabama;
- (X) #(33) Illinois Central Railroad Company, a corporation organized and existing under the laws of the State of Illinois, having its principal offices in Chicago, Illinois;
- (Y) # (34);
- (Z) # (35) Louisville & Nashville Railroad Company, a corporation organized and existing under the laws of the State of Kentucky, having its principal offices in Louisville, Kentucky;
- (AA) The following railroads, commonly controlled, which are:
 - (1) #(36) Midland Valley Railroad Company, a corporation organized and existing under the laws of the State

of Arkansas, having its principal offices in Philadelphia, Pennsylvania;

(2) # (37) Kansas, Oklahoma & Gulf Railway Co., a corporation organized and existing under the laws of the State of Oklahoma, having its principal offices in Philadelphia, Pennsylvania;

(3) # (38) Oklahoma City-Ada-Atoka Railway Company, Inc., a corporation organized and existing under the laws of the State of Oklahoma, having its principal offices in Muskogee, Oklahoma;

(BB) # (39) The Minneapolis & St. Louis Railway Company, a corporation organized and existing under the laws of the State of Minnesota, having its principal offices in Minneapolis, Minnesota;

(CC) # (40) Missouri-Kansas-Texas Railroad Company, a corporation organized and existing under the laws of the State of Kansas, having its principal offices in St. Louis Missouri;

(DD) Those railroads known as "Missouri Pacific Lines", which are:

(1) # (41) Missouri Pacific Railroad Company (Guy A. Thompson, Trustee), a corporation organized and existing under the laws of the State of Missouri, having its principal offices in St. Louis, Missouri;

(2) # (42) New Orleans, Texas & Mexico Railway Company, a corporation organized and existing under the laws of the State of Louisiana, having its principal offices in St. Louis,

(3) # (43);

(4) # (44);

(5) # (45);

- (6) # (46);
- (7) # (47);
- (8) # (48) International-Great Northern Railroad Company, a corporation organized and existing under the laws of the State of Texas, having its principal offices in St. Louis, Missouri;
- (9) # (49);
- (10) # (50);
- (11) # (51);
- (12) # (52);
- (13) # (53);
- (14) # (54);
- (15) # (55);
- (16) # (56);
- (17) # (57);
- (EE) Those railroads known as "New York Central System", which are:
 - (1) # (58) The New York Central Railroad Company, a corporation organized and existing under the laws of the States of New York, Ohio, Illinois, Indiana, Pennsylvania and Michigan, having its principal offices in New York, New York;
 - (2) # (59) The Pittsburgh & Lake Erie Railroad Company, a corporation organized and existing under the laws of the State of Pennsylvania, having its principal offices in New York, New York;
 - (3) # (60);
 - (4) # (61);
- (FF) # (62);
- (GG) # (63) The New York, New Haven and Hartford Railroad Company, a corporation organized and existing under the

laws of the States of Connecticut, Massachusetts and Rhode Island, having its principal offices in New Haven, Connecticut;

- (HH) # (64) Norfolk and Western Railway Company, a corporation organized and existing under the laws of the State of Virginia, having its principal offices in Roanoke, Virginia;
- (II) # (65) Northern Pacific Railway Company, a corporation organized and existing under the laws of the State of Wisconsin, having its principal offices in St. Paul, Minnesota;
- (JJ) # (66) The Pennsylvania Railroad Company, a corporation organized and existing under the laws of the State of Pennsylvania, having its principal offices in Philadelphia, Pennsylvania;
- (KK) # (67);
- (LL) # (68) Reading Company, a corporation organized and existing under the laws of the State of Pennsylvania, having its principal offices in Philadelphia, Pennsylvania;
- (MM) # (69);
- (NN) # (70) St. Louis-San Francisco Railway Company, a corporation organized and existing under the laws of the State of Missouri, having its principal offices in St. Louis, Missouri;
- (OO) # (71) St. Louis Southwestern Railway Lines, a corporation organized and existing under the laws of the State of Missouri, having its principal offices in St. Louis, Missouri;
- (PP) Those railroads known as "Southern Pacific Lines" which are:
 - (1) # (72) Southern Pacific Company, a corporation organized and existing under the laws of the State

of Delaware, having its principal offices in San Francisco, California;

- (2) # (73) Texas and New Orleans Railroad, a corporation organized and existing under the laws of the State of Texas, having its principal offices in Houston, Texas;
- (QQ) # (74) The Texas and Pacific Railway Company, a corporation organized and existing by Acts of Congress, having its principal offices in Dallas, Texas;
- (RR) # (75);
- (SS) # (76) Union Pacific Railroad Company, a corporation organized and existing under the laws of the State of Utah, having its principal offices in New York, New York;
- (TT) # (77) The Virginian Railway Company, a corporation organized and existing under the laws of the State of Virginia, having its principal offices in Norfolk, Virginia;
- (UU) # (78) Wabash Railroad Company, a corporation organized and existing under the laws of the State of Ohio, having its principal offices in St. Louis, Missouri;
- (VV) # (79) The Western Pacific Railroad Company, a corporation organized and existing under the laws of the State of California, having its principal offices in San Francisco, California;
- (WW) # (80) Minneapolis, St. Paul & Sault Ste. Marie Railroad Company, a corporation organized and existing under the laws of the State of Minnesota, having its principal offices in Minneapolis, Minnesota;
- (XX) Those railroads known as "Southern Railway System", which are:
 - (1) # (81) Southern Railway Company, a corporation organized and existing under the laws of the State

of Virginia, having its principal offices in the District of Columbia;

- (2) # (82) The Cincinnati, New Orleans & Texas Pacific Railway Co. , a corporation organized and existing under the laws of the State of Ohio, having its principal offices in Cincinnati, Ohio;
- (3) # (83) Georgia Southern & Florida Railway Company, a corporation organized and existing under the laws of the State of Georgia, having its principal offices in Macon, Georgia;
- (4) # (84) The Alabama Great Southern Railroad Company, a corporation organized and existing under the laws of the State of Alabama, having its principal offices in Birmingham, Alabama;
- (5) # (85) New Orleans & Northeastern Railroad Company, a corporation organized and existing under the laws of the State of Louisiana, having its principal offices in New Orleans, Louisiana;
- (6) # (86) Carolina and Northwestern Railway Company, a corporation organized and existing under the laws of the States of North Carolina and South Carolina, having its principal offices in Cincinnati, Ohio;
- (YY) # (87) Chicago & Eastern Illinois Railroad Company, a corporation organized and existing under the laws of the State of Indiana, having its principal offices in Chicago, Illinois;
- (ZZ) # (88) Seaboard Air Line Railroad Company, a corporation organized and existing under the laws of the State of Virginia, having its principal offices in Norfolk, Virginia;
- (AAA) # (89);

(BBB) # (90) Quanah Acme & Pacific Railway Company, a corporation organized and existing under the laws of the State of Texas, having its principal offices in Quanah, Texas.

10. AAR, Western Railways, Presidents Conference and Eastern Railroads are trade associations representing railroad interests in that part of the United States in which Riss operates. Byoir is, and has been at all times material hereto, publicity agent of Presidents Conference. Defendant railroads are the largest and most powerful railroads in the United States. Defendant railroads among themselves and through their trade associations and Byoir have sought over a period of years by any and every means to eliminate and restrain motor carrier competition and to secure for the railroads a monopoly of land transportation within the United States.

11. Transportation of property in interstate or foreign commerce is essential to the production, distribution and consumption of goods and services and to the maintenance of adequate means of national defense. The cost of goods and services produced within the United States is directly affected by transportation charges and the efficiency with which transportation service is performed. Industry prospers or declines depending upon the availability and cost of transportation service. Unreasonable restraints and restrictions upon the types of transportation available to producers, distributors or consumers of goods or the existence of a monopoly in transportation service directly affect the kind, quality and price of products and services offered to the public. Artificial restraints and restrictions upon transportation materially increase the cost of national defense and hamper the preparation and maintenance of adequate means of national defense. The development of the motor carrier industry during the last twenty years, with the speed and flexibility of service offered by motor carriers, has made available a more efficient and economical means of transportation than that offered by railroads. The existence of competition through the development of motor carriers has resulted in the creation of a national transportation system adequate to the needs of commerce and of the national defense.

12. Riss was organized in 1927 and has since that time engaged in transportation as a common carrier by motor vehicle of property in interstate or foreign commerce. Riss holds certificates of public convenience and necessity and other operating authority issued by the Interstate Commerce Commission authorizing service between points, over routes and within territory in the States of Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Maryland, Delaware, Virginia, West Virginia, Ohio, Kentucky, Indiana, Illinois, Michigan, Iowa, Nebraska, Kansas, Colorado, Missouri, Oklahoma, Texas and the District of Columbia. Riss maintains terminal facilities for handling freight in twenty-six cities in this territory and maintains five sales and executive offices, including one in the District of Columbia. In addition to transportation service between points Riss is authorized to serve, Riss also provides service over its routes, in conjunction with other motor carriers, on property moving in interstate or foreign commerce to or from numerous other points within the United States. Riss operates in excess of 800 truck units and has over 2,000 employees. During the years from 1950 to 1953 inclusive Riss has been one of the five largest interstate motor carriers in the United States in terms of gross revenues. Riss is and has been for several years one of the largest motor carriers of military supplies, including ammunition and explosives, for the Armed Forces. In the period 1950 through 1953 Riss' gross operating revenues, intercity miles operated and tonnage transported in interstate and foreign commerce were as follows:

<u>Year</u>	<u>Gross Revenue (Dollars)</u>	<u>Intercity Miles Operated</u>	<u>Tons of Revenue Freight Carried in Intercity Service</u>
1950	\$18,257,276	42,425,399 miles	658,200 Tons
1951	21,503,950	48,432,305 miles	748,302 Tons
1952	26,788,120	61,507,794 miles	841,785 Tons
1953	29,114,678	63,903,619 miles	846,691 Tons

13. Beginning in or about the year 1950, the exact date being to Riss unknown, and continuing thereafter up to and including the date of the filing of this complaint, defendant railroads among themselves; AAR, Western Railways,

Presidents Conference, Eastern Railroads, and Byoir among themselves; and defendant railroads with AAR, Western Railways, Presidents Conference, Eastern Railroads and Byoir, together with other persons to Riss unknown, have agreed, combined and conspired in unreasonable restraint of trade and commerce in the transportation of property in interstate and foreign commerce and have conspired, combined and attempted to monopolize the transportation of property in interstate and foreign commerce. The object of the agreement, conspiracy, combination and attempt has been to restrict, restrain, impede, harass, and eliminate the competition of Riss in the transportation of property in interstate and foreign commerce in violation of Sections 1 and 2 of the Sherman Act.

14. As a part and for the purpose of effectuating the unlawful agreement, combination and conspiracy to restrain the competition of Riss and to monopolize the land transportation of property by the elimination of Riss, defendant railroads AAR, Western Railways, Presidents Conference, Eastern Railroads, and Byoir have engaged and are engaging in the following types of activity and other types of activities to Riss unknown:

- (A) The solicitation, directly and indirectly through front organizations, of elected and appointed officials of States to institute action to bring about a revocation and cancellation of the interstate operating authority held by Riss. As an example of this type of activity, during 1952 an employee of Byoir, acting upon instructions of an employee of The Pennsylvania Railroad Company and agent of Presidents Conference, contacted officials of the Public Utilities Commission of the State of Ohio and sought to have the Public Utilities Commission of Ohio institute proceedings before the Interstate Commerce Commission to cancel operating authority held by Riss.
- (B) The solicitation, directly and indirectly through front organizations, of elected and appointed officials of

States, cities, towns, counties and other political subdivisions of States in which Riss holds interstate operating authority to impose statutes, ordinances and regulations which would eliminate, hamper, restrict and impede motor carrier operations by Riss and which were designed to render motor carrier operations impractical and economically unfeasible. As examples of these types of activities, defendants sought to have adopted statutes, ordinances and regulations limiting the weight of certain commodities to be transported in one truck to a maximum of 5,000 pounds and limiting or prohibiting the use of necessary routes, bridges and tunnels by Riss.

"As a further example, defendants sought to maintain and impose other weight limitations applicable to the transportation of commodities generally, through a propaganda and public relations campaign based, in part, upon assertions of destruction and damage to highways created by long distance truckers." (Added by Order of Judge Sirica, March 6, 1959)

- (C) The solicitation and advising, directly and indirectly through front organizations, of elected and appointed officials of States, cities, towns, counties and other political subdivisions of States in which Riss holds interstate operating authority to institute special campaigns designed to harass, burden and impede interstate transportation by Riss through the unusual enforcement of statutes, ordinances and regulations against Riss. As an example, during 1952 an employee of Byoir solicited and advised the Public Utilities Commission of Ohio to

assign special investigators to follow the vehicles operated by Riss hundreds of miles for the purpose of finding any possible violations.

- (D) Abuse of the privilege of intervention and participation in proceedings before the Interstate Commerce Commission controlling the legal right and authority of Riss to engage in the transportation of property as a common carrier by motor vehicle. As an example of this activity, beginning in 1951, defendants participated and solicited the participation by citizens groups, automobile clubs, chambers of commerce, parent-teacher associations and other miscellaneous organizations and persons in a proceeding still pending before the Interstate Commerce Commission in which Riss is the applicant for operating authority. As a result of this activity, the proceeding before the Interstate Commerce Commission consumed fifty days of hearings, the transcript is 7,319 pages long and 340 exhibits comprising thousands of pages were identified. Defendants used the proceeding before the Interstate Commerce Commission as a vehicle for conducting a scurrilous, vicious and false campaign of publicity and propaganda against Riss. Defendants obtained and sought to obtain the participation in the proceedings of independent public authorities, citizens groups, chambers of commerce, parent-teacher organizations and others through the circulation of viciously false, misleading and incomplete statements and propaganda directly through agents and employees of defendants and by others whose intimate association with defendants was not revealed.

- (E) Institution of a campaign of unfair competitive practices against Riss through the preparation, circulation and publication of false and malicious statements concerning Riss, the operations conducted by Riss and the character and conduct of its officers. As an example of this activity Southern Railway Company caused to be published and circulated in its magazine entitled "TIES" in November, 1951 an article relating the operations conducted by Riss to the release of a mad dog on the main streets of towns and cities. This article also solicited all readers to urge elected officials, chambers of commerce, trade associations, civic groups and parent-teacher groups to take formal action in opposition to the operations of Riss.

15. Defendants have conducted their activities in furtherance of their unlawful objectives directly through their own employees, agents and others whose association and relationship to defendants is generally known. These activities have also been carried on through front organizations, employees and agents whose relationship to the railroad industry was unknown to the public. The defendants have also sought to infiltrate and utilize a number of independent public organizations such as the Illinois Parent Teachers Association and Congress of Parents and Teachers of Oklahoma in achieving their unlawful objectives. A substantial portion of defendants' activities in furtherance of their unlawful objectives took place within the District of Columbia.

16. The unlawful agreement, combination, conspiracy and attempt to restrain and monopolize of defendants has been entered upon and carried out primarily through such instrumentalities as the so-called "Competitive Transportation Research", "Motor Carrier Bureau", and "Committee on Motor Transportation" of defendants. In addition, committees have been formed by defendant railroad associations and among defendant railroads of less permanent duration and organization but which were specially engaged in furthering the unlawful

activities of defendants. Defendants have expended enormous sums of money, which plaintiff estimates at not less than \$1,000,000, in pursuance of and in implementing their objective of restraining and eliminating the competition of Riss.

17. The unlawful agreement, combination and conspiracy to restrain the competition of Riss and attempt to monopolize land transportation by the elimination of Riss, has resulted, as contemplated and intended by defendants, in substantial impairment of the operations of Riss, in the loss of profits by Riss in the transportation of property as authorized by its operating authority, in damage to the good name and reputation of Riss within the transportation industry and among shippers and receivers of freight and has compelled Riss to expend its resources, energies and money in combatting defendants' unlawful interference with its business; all in the amount of \$30,000,000 to the date of filing of this complaint. The unlawful agreement, combination and conspiracy to restrain and attempt to monopolize of defendants has been pursued to the present time and will continue unless restrained by this Court.

18. On or about Oct. 20, 1955, the railroad defendants herein caused to be submitted to traffic officials employed by the Department of Defense a uniform, unpublished rate quotation, by and on behalf of the railroads engaged in carrying explosives traffic in competition with the plaintiff. Said quotation, established railroad rates for carrying explosive shipments totalling more than 50,000 pounds which were nearly forty percent below the general level of such rates prevailing for the previous eight years. Said uniform and concerted rate reduction, which took effect on or about November 20, 1955, was intended to exclude the plaintiff from the business of carrying such shipments of explosives and has had that effect with respect to the principal points served by the plaintiff. Said quotation was made for the purpose of effectuating one of the principal objects of the conspiracy charged herein, to wit, the elimination of the plaintiff as a competitor with the railroads for explosives traffic and has substantially injured the plaintiff's business. The Interstate Commerce Commission has no

jurisdiction over said quotation. and plaintiff will continue to suffer substantial and irreparable injury from said illegal quotation: until and unless the acceptance of traffic pursuant thereto is enjoined by this Court.

WHEREFORE, Plaintiff demands:

1. Injunctive relief permanently enjoining and restraining AAR, Western Railways, Presidents Conference and Eastern Railroads, and each of them, from creating or continuing any committees, subcommittees, bureaus, departments, sections, divisions, subdivisions, or other association activity the principal purpose of which is to restrain, impede, impair, hamper, harass or eliminate the competition of plaintiff and of other motor carriers;
2. Injunctive relief permanently enjoining, restraining and prohibiting defendants and each of them and their officers, directors, agents, servants and employees from agreeing, conspiring or combining to restrain the competition of plaintiff and from conspiring, combining and attempting to monopolize land transportation by the elimination of plaintiff and from performing any acts in furtherance of such unlawful objects and purpose;
3. Judgment against defendants and each of them for \$90,000,000, being the amount equal to three times the damages sustained by plaintiff;
4. Judgment against defendants and each of them for the amount of reasonable attorneys' fees and costs of this action;
5. Such other and further relief as to the Court may appear just and proper; and

6. Injunctive relief enjoining the defendant railroads from accepting traffic pursuant to the illegal quotation described in paragraph 18 hereof.

/s/ A. Alvis Layne, Jr.
A. Alvis Layne, Jr.

(Other signatures omitted)

(CERTIFICATE OF SERVICE OMITTED) Attorneys for Plaintiff

(HEADING OMITTED) Civil Action No. 4056-54 Filed February 17, 1958

ANSWER OF DEFENDANT TRAFFIC EXECUTIVE ASSOCIATION -
EASTERN RAILROADS TO COMPLAINT AS SUPPLEMENTED

Defendant Traffic Executive Association - Eastern Railroads (hereinafter referred to as "this defendant"), by its attorneys, for itself and for itself alone, answers the complaint as supplemented as follows:

First Defense

1. This defendant adopts and incorporates by reference as if fully set forth herein paragraphs 1 to 13, inclusive, of the First Defense set forth in its answer to the original complaint.

2. This defendant denies the allegations and each of them contained in paragraph 18 of the complaint as supplemented.

Second to Tenth Defenses, Inclusive

3. This defendant adopts and incorporates by reference as if fully set forth herein the Second to Tenth Defenses, inclusive, set forth in its answer to the original complaint.

Eleventh Defense

4. Alleges that all joint rate quotations for the transportation of explosives submitted, during the period covered by the complaint as supplemented

and for some years prior thereto, to the Department of Defense by the railroad defendants who are members of the Traffic Executive Association - Eastern Railroads were made under and in accord with Section 22 of the Interstate Commerce Act (49 U.S.C. §22) and that the rate or rates under which such railroad defendants have transported or offered to transport explosives for the United States Government during such period have been adopted pursuant to and in conformity with the provisions of formal agreements submitted to and approved by the Interstate Commerce Commission under Section 5a of the Interstate Commerce Act (49 U.S.C. §5b).

5. On information and belief, alleges that all joint rate quotations for the transportation of explosives submitted, during the period covered by the complaint as supplemented and for some years prior thereto, to the Department of Defense by the other railroad defendants herein which are not members of the Traffic Executive Association - Eastern Railroads were made under and in accord with Section 22 of the Interstate Commerce Act (49 U.S.C. §22) and that the rate or rates under which such other railroad defendants have transported or offered to transport explosives for the United States Government during such period have been adopted pursuant to and in conformity with the provisions of formal agreements submitted to and approved by the Interstate Commerce Commission under Section 5a of the Interstate Commerce Act (49 U.S.C. §5b).

6. Section 5a of the Interstate Commerce Act expressly provides that the making and carrying out of agreements in conformity with the provisions of an agreement approved by the Interstate Commerce Commission under said section shall relieve the parties thereto from the operation of the antitrust laws and, accordingly, paragraph 18 of the complaint as supplemented is based upon matters with respect to which this Court can grant no relief in this proceeding.

Twelfth Defense

7. Alleges that the quotation referred to in paragraph 18 of the complaint as supplemented was not made for the purpose of effectuating one of the principal objectives of the alleged conspiracy charged in the complaint, that this defendant

is not charged with participation in any of the acts alleged in said paragraph 18 and, therefore, said paragraph 18 states no claim or cause of action as against this defendant upon which relief can be granted.

Thirteenth Defense

8. Alleges that the rate quotation referred to in paragraph 18 of the complaint as supplemented was in fact a series of joint rate quotations, which were not uniform, submitted on behalf of railroad defendants by the respective rate making bodies representing such defendants, acting under and in conformity with the provisions of Section 5a agreements submitted to and approved by the Interstate Commerce Commission, that such quotations were submitted to the Department of Defense at the express request of such Department for a substantial reduction in the joint rates for the transportation of explosives, that officials of the Department of Defense had made an independent study of the rate structures of the various forms of transportation and requested rates which were believed by them to be compensatory to all carriers, that the levels of the joint rates submitted by the railroad defendants to the Department of Defense for such transportation in response to such request were equal to or above the rates requested by said officials of the Department of Defense, and that the injury, if any, suffered by plaintiff resulted not from the making of said rate quotations, but from their acceptance by the Department of Defense and from the election of said Department to ship explosives over the lines of the railroad defendants rather than over the lines of plaintiff.

9. The joint establishment of such reduced rates, pursuant to Section 22 of the Interstate Commerce Act, was and is a reasonable and appropriate method of protecting a legitimate competitive interest of the railroad defendants. Such action would not and does not constitute a violation of the antitrust laws and serves to promote the national transportation policy set forth in the Transportation Act of 1940 (54 Stat. 899).

10. The aforesaid practices of the Department of Defense have encouraged, and have in fact required, joint action by railroad carriers in quoting

rates for the transportation of explosives for the United States Government and in the submission of such rate quotations to the Department of Defense pursuant to Section 22.

11. By reason of the matters set forth in paragraphs 8, 9 and 10 hereof, paragraph 18 of the complaint as supplemented fails to state a claim against this defendant upon which relief can be granted.

WHEREFORE, this defendant prays that the complaint as supplemented be dismissed, that this defendant be awarded its costs and disbursements in this action, and that this Court grant such other and further relief as may seem just and proper in the premises.

/s/ SAMUEL E. GATES

Attorneys for Defendant TEA-ER

(CERTIFICATE OF SERVICE OMITTED)

(HEADING OMITTED) Civil Action No. 4056-54 Filed February 18, 1958

ANSWER TO COMPLAINT AS SUPPLEMENTED AND COUNTERCLAIM
OF THE DEFENDANT THE PENNSYLVANIA RAILROAD COMPANY
(66)

The Pennsylvania Railroad Company (hereinafter referred to as "this defendant") by its attorneys answers the Complaint As Supplemented herein as follows:

First Defense

1. This defendant adopts and incorporates by reference as if fully set forth herein the First Defense set forth in its Amended Answer to the original complaint.

2. This defendant denies each and every allegation and conclusion of Paragraph 18 of the Complaint As Supplemented.

Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth,
Ninth, Tenth and Eleventh Defenses

3. This defendant adopts and incorporates by reference as if fully set forth herein the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth,

Tenth and Eleventh Defenses set forth in its Amended Answer to the original complaint.

Twelfth Defense

4. The rates and charges made or quoted to the Department of Defense jointly with other railroads by this defendant for the transportation of explosives under which this defendant has transported or offered to transport such commodities during the period covered by the Complaint As Supplemented were made under and in accordance with provisions of formal agreements that were submitted to the Interstate Commerce Commission for approval under Section 5a of the Interstate Commerce Act (49 U.S.C. § 5b), and that were approved by that Commission.

5. Under the provisions of Section 5a of the Interstate Commerce Act and by virtue of the fact that the Interstate Commerce Commission has approved the aforesaid agreements, this defendant and the other parties to such agreements were relieved from the operation of the antitrust laws with respect to the making of such agreements and with respect to the carrying out of the provisions of such agreements in accordance with the terms thereof and the conditions prescribed with respect thereto by the Interstate Commerce Commission.

6. Since Section 5a of the Interstate Commerce Act relieves this defendant from the operation of the antitrust laws with respect to the making and carrying out of said agreements referred to in Paragraphs 4 and 5 above, Paragraph 18 of the Complaint As Supplemented is based upon matters with respect to which this Court can grant no relief in this proceeding.

Thirteenth Defense

7. The rates charged by this defendant to the United States for the transportation of explosives during the period covered by the Complaint As Supplemented have at all times been at a compensatory level; changes in said rates have been based upon business judgments as to circumstances then prevailing in the transportation industry, including competitive conditions among other factors; and the making of such changes has been a reasonable response to such

circumstances in the industry, including competitive conditions among other factors.

COUNTERCLAIM

Count I

1. This defendant adopts and incorporates by reference, as if fully set forth herein, Paragraph 1 through 12, inclusive, of the counterclaim filed by it in connection with its Amended Answer, as Count I of its counterclaim.

2. Riss at all times material hereto has been transacting business in the District of Columbia, and is found in the District of Columbia.

Count II

3. Jurisdiction of this Court to hear this counterclaim is based upon 28 U.S.C. § 1337 and 15 U.S.C. §§ 1, 2, 15, 22, 26. This defendant adopts and incorporates by reference as if fully set forth herein Paragraphs 2, 3, 4, 5, 6, 7, 9, and 10 of the counterclaim filed by it in conjunction with its Amended Answer, and Paragraph 2 of Count I of this counterclaim set forth above.

4. Commencing prior to January 1, 1954 and at all times since that date Riss has unlawfully combined and conspired with other motor carriers (a) to injure and destroy the competition of this defendant and other rail carriers in the transportation of property in interstate commerce for the United States, (b) to monopolize such transportation, and (c) to fix prices for such transportation. In furtherance of this combination and conspiracy, Riss and other motor carriers have acted jointly to establish uniform rates over competing routes for the transportation of property in interstate commerce for the United States, and particularly for the transportation of ammunition and explosives, at unreasonably low levels. Riss participated in such joint action for the establishment of uniform rates for the purpose of diverting to itself and other motor carriers all such transportation for the United States.

5. The actions of Riss and its co-conspirators have caused substantial injury to the public by increasing the general cost of transportation of freight for private shippers and by weakening the national transportation system. Such

unlawful actions have also damaged this defendant by diverting from it profitable traffic that would otherwise have obtained and by reducing the revenues from transportation it performed for the United States.

6. The precise amount of damage to this defendant caused by these illegal operations and actions of Riss is not precisely known to this defendant, but is in excess of \$3,000.

7. Unless Riss is restrained from continuing its unlawful activities this defendant will sustain further and irreparable injury.

Count III

8. The jurisdiction of this Court to hear this counterclaim is based upon 28 U.S.C. § 1337 and 15 U.S.C. §§ 2, 15, 22, 26. This defendant adopts and incorporates by reference as if fully set forth herein Paragraphs 2, 3, 4, 5, 6, 7, 9 and 10 of the counterclaim filed by it in conjunction with its Amended Answer, and Paragraph 2 of Count I of this counterclaim set forth above.

9. Commencing prior to January 1, 1954 and at all times since that date, Riss has attempted to monopolize transportation of property in interstate commerce for the United States in all areas served by Riss, and particularly the transportation of ammunition and explosives, by establishing unreasonably low rates for such transportation. Such rates were established with the intent and purpose of obtaining for Riss all of such transportation and of forcing this defendant and all other rail carriers to withdraw from competition with Riss for such transportation.

10. The establishment of unreasonably low rates by Riss has caused substantial injury to the public by increasing the general cost of the transportation of freight for private shippers and by weakening the national transportation system. Such unlawful action has also damaged this defendant by diverting from it profitable traffic it otherwise would have transported and by reducing the revenues obtained for transportation services it performed for the United States.

11. The precise amount of damage to this defendant caused by the illegal unreasonably low rates established by Riss is not precisely known to this defendant, but is in excess of \$3,000.

12. Unless Riss is restrained from performing transportation for the United States at its illegal and unreasonably low rates, this defendant will sustain further and substantial irreparable injury.

WHEREFORE, this defendant demands:

- (a) That the Complaint As Supplemented of Riss be dismissed;
- (b) Judgment against Riss for the sum of Ten Million Dollars (\$10,000,000) or for such greater sum as may be proved at the trial as the damages to this defendant from the illegal operations and actions of Riss alleged in Count I of the counterclaim;
- (c) Judgment against Riss on Counts II and III of the counterclaim for three times such damages as are proven on trial to have been suffered by this defendant, together with its costs and reasonable attorneys' fees;
- (d) Judgment enjoining Riss from the unlawful conduct alleged in Counts II and III of the counterclaim; and
- (e) Any other and further relief which the Court may find just and proper.

/s/ James H. McGlothlin
Attorneys for Defendant PRR

(CERTIFICATE OF SERVICE OMITTED)

(HEADING OMITTED) Civil Action No. 4056-54 Filed February 18, 1958

ANSWER TO COMPLAINT AS SUPPLEMENTED
AND COUNTERCLAIM OF DEFENDANT (8)
ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY

The Atchison, Topeka and Santa Fe Railway Company (hereinafter called the defendant), for its answer to the complaint as supplemented, states its defenses and counterclaims as follows:

First Defense

1. Defendant adopts and incorporates by reference as if fully set forth herein the First Defense set forth in its answer to the original complaint, filed December 15, 1954.

2. This defendant denies each and every allegation and conclusion of Paragraph 18 of the complaint as supplemented.

Second, Third, Fourth, Fifth,
Sixth, Seventh, and Eighth Defenses

3. Defendant adopts and incorporates by reference as if fully set forth herein the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth Defenses set forth in its answer to the original complaint, filed December 15, 1954.

Ninth Defense

4. All quotations and tenders of rates and charges for the transportation of ammunition and explosives for the United States, or any agency thereof, including the Department of Defense, issued by or on behalf of this defendant, except rates and charges set forth in tariffs which are available to all shippers, have been issued pursuant to Section 22 of the Interstate Commerce Act. All joint quotations of such Section 22 rates to the United States, or any agency thereof, including the Department of Defense, for the transportation of ammunition and explosives under which this defendant has transported or offered to transport such commodities during the period

December 15, 1949, to the present time have been adopted pursuant to and in conformity with the terms of agreements to which it is a party and which have been approved by the Interstate Commerce Commission under Section 5a of the Interstate Commerce Act (49 U. S. C. sec. 5b).

5. By the express language of Section 5a and Section 22 of the Interstate Commerce Act, this defendant is relieved from the operation of the antitrust laws with respect to the making and carrying out of said agreements in conformity with their provisions, and, accordingly, Paragraph 18 of the supplemental complaint is based upon matters with respect to which this Court can grant no relief in this proceeding.

Tenth Defense

6. The rates charged by this defendant to the United States, or any agency thereof, for the transportation of explosives during the period covered by the complaint have at all times been fixed at a compensatory level; all changes in said rates have been based upon the independent business judgment of this defendant in the light of competitive conditions in the transportation industry; and the action of this defendant in instituting such changes has been a reasonable response to such competitive conditions.

COUNTERCLAIM

Count I

1. Counterclaimant adopts and incorporates by reference, as if fully set forth herein, Paragraphs 1 through 3, and 5 through 24, inclusive, of the Counterclaim filed by it on December 15, 1954, as Count I of its Counterclaim.

2. Plaintiff and Counterclaim defendant, Riss & Company, Inc., (hereinafter referred to as "Riss"), is a corporation organized and existing under the laws of the State of Delaware, and at all times material hereto has been engaged in business in the District of Columbia.

Count II

3. The jurisdiction of this Court to hear this Counterclaim

pursuant to Rule 13, Federal Rules of Civil Procedure, is based upon 28 U.S.C. Sec. 1337 and 15 U.S.C. Sec 5 1, 2, 15, 22, 26.

4. Counterclaimant adopts and incorporates by reference, as if fully set forth herein, Paragraphs 3 and 5 through 9 of the Counterclaim filed by it on December 15, 1954, and Paragraph 2 of Count I of this Counterclaim set forth above.

5. Beginning at a time prior to January 1, 1954, and at all times since that date, Riss and other motor carriers have unlawfully combined and conspired (a) to injure and destroy the competition of the Counterclaimant and other rail carriers in the transportation of property in interstate commerce for the United States, (b) to monopolize the transportation of property in interstate commerce for the United States, and (c) to fix prices for the transportation of property in interstate commerce for the United States. In furtherance of this combination and conspiracy, Riss and other motor carriers have acted jointly, and by delegating to a single carrier the power to tender rates for other carriers, to establish uniform rates over competing routes for the transportation of property in interstate commerce for the United States, and particularly for the transportation of ammunition and explosives, at unreasonably low levels for the purpose of diverting to themselves all of such transportation and of forcing Counterclaimant and other rail carriers to withdraw from such transportation.

6. The activities of Riss and its co-conspirators have resulted in substantial injury to the Counterclaimant and to other rail carriers by diverting from them profitable traffic which they would otherwise have transported, by reducing the amount of revenue derived from such transportation services as they have in fact performed for the United States, and by impairing their ability to perform transportation services. Such activities have also resulted in injury to the public by increasing the general cost of transportation of freight for private shippers and by weakening the national transportation system.

7. Counterclaimant does not presently know the precise amount of total damages caused it by the aforesaid illegal conduct of Riss and its co-conspirators. The specific traffic obtained by Riss and its co-conspirators by reason of their unlawful conduct and other information necessary to the exact computation of damages are within the knowledge of Riss or recorded in books required by law to be kept by Riss.

8. Unless Riss and its co-conspirators are restrained from continuing their unlawful activities, Counterclaimant will sustain further substantial and irreparable injury.

Count III

9. The jurisdiction of this Court to hear this Counterclaim pursuant to Rule 13, Federal Rules of Civil Procedure, is based upon 28 U.S.C., Sec. 1337 and 15 U.S.C. Sec. 2, 15, 22, 26.

10. Counterclaimant adopts and incorporates by reference, as if fully set forth herein, Paragraphs 3 and 5 through 9 of the Counterclaim filed by it on December 15, 1954, and Paragraph 2 of Count I of this Counterclaim set forth above.

11. Beginning at a time prior to January 1, 1954, and at all times since that date, Riss has attempted to monopolize the transportation of property in interstate commerce for the United States, within the twenty-two state area served by Riss, and particularly the transportation of ammunition and explosives, by establishing unreasonably low rates for such transportation for the purpose of diverting to Riss all of such transportation and of forcing Counterclaimant and other rail carriers serving said area to withdraw from such competition.

12. The activities of Riss have resulted in substantial injury to the Counterclaimant and to other rail carriers operating within said twenty-two state area by diverting from them profitable traffic which they would otherwise have transported, by reducing the amount of revenue derived from such transportation services as they have in fact performed for the United

States, and by impairing their ability to perform transportation services. Such activities have also resulted in injury to the public by increasing the general cost of transportation of freight for private shippers and by weakening the national transportation system.

13. Counterclaimant does not presently know the precise amount of total damages caused it by the aforesaid illegal conduct of Riss. The specific traffic obtained by Riss by reason of its unlawful conduct and other information necessary to the exact computation of damages are within the knowledge of Riss or recorded in books required by law to be kept by Riss.

14. Unless Riss is restrained from continuing its unlawful activities, Counterclaimant will sustain further substantial and irreparable injury.

WHEREFORE, defendant and Counterclaimant asks judgment against plaintiff and counter-defendant, Riss & Company, Inc., (a) dismissing the plaintiff's complaint herein; (b) granting defendant and Counterclaimant judgment on Count I of its Counterclaim against plaintiff; (c) granting defendant and Counterclaimant judgment on Counts II and III of its Counterclaim against plaintiff for three times such damages as may be proven on trial to have been suffered by it, together with its costs and reasonable attorneys' fees, and enjoining plaintiff's unlawful conduct; and (d) granting this defendant such other relief as is just.

SIDLEY, AUSTIN, BURGESS & SMITH
11 South LaSalle Street
Chicago, Illinois
Of Counsel

/s/ Lawrence Cake
Attorneys for Defendant and
Counterclaimant,
Atchison, Topeka and Santa Fe
Railway Company

(HEADING OMITTED) Civil Action 4056-54 [Filed Feb. 21, 1958]

SUPPLEMENT TO ANSWER OF
CARL BYOIR & ASSOCIATES, INC..

The answer of defendant CARL BYOIR & ASSOCIATES, INC..
is hereby amended to add the following:

20. This defendant is without knowledge or information sufficient to form a belief as to the truth of any allegation contained in Paragraph 18 of the Complaint as supplemented.

(Signatures omitted)

Attorneys for Defendant, Carl Byoir &
Associates, Inc.

CERTIFICATE OF SERVICE

I certify that the foregoing supplement to the answer of Carl Byoir & Associates, Inc. was served upon the plaintiff by delivering a copy thereof to Layne & Ephraim, Pennsylvania Building, Washington, D. C., attorneys for plaintiff, on February 21, 1958, and upon all other parties of record by mailing a copy to each on February 21, 1958, either to said parties or to their counsel.

(Signature omitted)

(HEADING OMITTED) Civil Action No. 4056-54 Filed February 25, 1958

OPINION

A. Alvis Layne, Jr., H. Charles Ephraim, Robert L. Wright,
Lester N. Bridgeman and T. S. L. Perlman, Washington, D. C.,
Attorneys for Plaintiff.

Stuart S. Ball, Richard J. Flynn, J. H. Hays, Amos M. Mathews,
J. W. Nisbet, Chicago, Ill., and Lawrence Caks, Washington, D. C.,
Attorneys for Defendant The Association of Western Railways.

C. Brewster Rhoads, Joseph W. Swain, Jr., Philadelphia, Pa.,
Hugh B. Cox, James H. McGlothlin, Washington, D. C., Attorneys for
Defendant Eastern Railroads Presidents Conference.

The plaintiff, Riss & Company, Inc., a common carrier by motor vehicle in interstate commerce, filed an action in this court, for an injunction and treble damages under the antitrust laws of the United States, alleging that the defendants, comprised of railroad companies, railroad associations and one public relations firm, agreed, combined and conspired in unreasonable restraint of trade and commerce to injure plaintiff's trucking business contrary to the provisions of the Sherman Anti-Trust Act, Sections 1 and 2 (15 U.S.C. Sec. 1, 2). This court has jurisdiction over this controversy by reason of Section 7 of the Sherman Act (26 Stat. 210, 28 Stat. 570) and sections 4, 12 and 16 of the Act of October 15, 1941 (38 Stat. 731, 736, 737), commonly known as the Clayton Act (15 U.S.C. 15, 22 and 26).

The complaint further alleges that the plaintiff has been operating as a common carrier of property by motor vehicle since 1927, and holds certificates of public convenience and necessity and other operating authority issued by the Interstate Commerce Commission authorizing service between points, over routes, and within the territory in 22 states and the District of Columbia, and also that Riss operates in excess of 800 truck units and has over 2,000 employees. Riss also has alleged that during the years from 1950 to 1953, inclusive, it was one of the five largest interstate motor carriers in the United States in terms of gross revenues and is, and has been for several years, one of the largest motor carriers of military supplies, including ammunition and explosives, for the Armed Forces.

Defendants include approximately 58 of the first class railroad companies in the United States, plus certain of their joint organizations and trade associations used for public relations and other purposes, and one public relations firm, Carl Byoir and Associates, Inc., of New York City.

The complaint further charges that defendants, beginning in or

about the year 1950, conspired over a period of years to eliminate the plaintiff as a competitor and thus to obtain for themselves a monopoly of land transportation in the United States.

As a part, and for the purpose of effectuating the unlawful agreement, combination, and conspiracy to restrain the competition of Riss, and to monopolize the land transportation of property by the elimination of Riss, it is alleged that the defendants have engaged and are engaging in the solicitation, directly and indirectly through front organizations, of elected and appointed officials of states to institute action to bring about a revocation and cancellation of the interstate operating authority held by Riss.

Plaintiff further asserts that defendants, by similar methods, attempted to have officials of states, cities and towns, where plaintiff operates, impose statutes, ordinances and regulations which would eliminate, hamper, restrict and impede motor carrier operations by the plaintiff and which were designed to render motor carrier operations impractical and economically unfeasible.

As examples of these types of activities, it is charged that defendants sought to have statutes, ordinances and regulations adopted limiting the weight of certain commodities to be transported in one truck to a maximum of 5000 pounds, and limiting or prohibiting the use of necessary routes, bridges and tunnels by plaintiff.

Defendants also are alleged to have abused their privilege of intervention in proceedings before the Interstate Commerce Commission. According to plaintiff, defendants joined together to carry on an extensive and vicious campaign of anti-truck propaganda in order to persuade citizens' groups, automobile clubs and other neutral organizations to register their complaints against Riss in the course of proceedings started by Riss before the I. C. C. to obtain new operating authorizations. Other unfair competitive practices, such as circulating and publishing false

and malicious statements about Riss and its officers are also charged in the complaint. It is further alleged that in 1955 defendants submitted to traffic officials of the Department of Defense a uniform rate quotation on the carrying of explosives on the part of railroads competing with plaintiff for this same kind of traffic. Rates for shipments totalling 50,000 pounds were reduced more than forty per cent from the level which had prevailed for the preceding eight years. Plaintiff contends that this joint action is a further step in the conspiracy to eliminate plaintiff as a competitor of the railroads, especially in the field of transportation of explosives.

It is also charged that defendants have expended enormous sums of money, which plaintiff estimates at not less than \$1,000,000 in pursuance of and in implementing their objectives of restraining and eliminating the competition of plaintiff. As a result of defendant's activities, plaintiff claims losses amounting to thirty million dollars. As relief, plaintiff seeks an injunction restraining defendants from their unlawful competitive practices and treble damages amounting to ninety million dollars.

Two of the defendants - The Association of Western Railways, hereinafter referred to as AWR, and the Eastern Railroads Presidents Conference, hereinafter referred to as ERPC - have moved to dismiss the complaint for lack of proper venue and they have also moved to quash the return of service of summons. In both motions, the questions of law are quite similar. However, the facts relied upon by either side with respect to the venue question are different and will be dealt with separately.

In suits by private parties for damages caused by violations of the antitrust laws and brought against defendants who are not corporations, the venue requirements are set forth in Section 4 of the Clayton Act (15 U.S.C.A. Sec 15), as follows:

"Any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee." (Emphasis supplied)

In this suit, AWR and ERPC are unincorporated associations and hence they may be sued only in the district in which they reside or in which they are found, or in which they have an agent.

For all practical purposes, both AWR and ERPC have conceded that as far as the requirements of Rule 4 of the Federal Rules of Civil Procedure are concerned, plaintiff has made service of process upon an appropriate agent in the District of Columbia. They contend, however, and rightly so, that this service of process cannot be considered valid to confer personal jurisdiction over the defendants unless it appears that both AWR and ERPC are lawfully subject to suit in the District of Columbia under the terms of Section 4. In both motions, therefore, the essential problem to be considered is whether these defendants reside or are found or have an agent in this district.

A. Motion of Association of Western Railways to Dismiss Complaint, or in Lieu Thereof, to Quash the Return of Service of Summons.

AWR is an unincorporated association with its principal and only regular office in Chicago, Illinois. It consists of an Executive Committee of 15 members, all of whom are presidents of member railroad companies in the western part of the United States, and a staff of 18 full-time employees under the direction of Mr. Daniel P. Loomis. At present, AWR has no written constitution, articles, or by-laws. Since 1948, however, AWR has been filing reports with the Clerk of the House of Representatives, under the provisions of the Federal Lobbying Act (2 U.S.C.A. Sec. 261). The first quarterly report for 1958 contains a paragraph that purports to

summarize the purposes for which AWR was organized.

"The principal purpose of this association is to deal with matters which are regional in character and which are of common concern to the railroads of the Western District. It affords means for handling, and supervises joint facilities of western lines which handle matters of policy, operating matters, the weighing and inspection of freight, promotion of freight and passenger traffic, adjustment and publication of rates and related matters, the handling of labor relations, public relations, and economic, legal and transportation research and matters of similar character."

In actual operation, AWR appears to devote most of its efforts toward representing the western railroads before Federal administrative agencies, and before state and Federal legislatures as well as to advancing the cause of rail transportation in the western part of the United States through active public relations campaigns. These things are done by the two major departments of AWR - Public Relations and Law. The Public Relations Department and its staff specialize in gathering, writing and circulating data on a nationwide basis to influence public opinion favorably to the railroads and, according to plaintiff's allegation, adversely to motor transportation. The Law Department represents the interests of the western railroads before the legislatures, both State and Federal, and before the regulating agencies, primarily the Interstate Commerce Commission. On this staff there are eight lawyers, two research engineers and two special representatives; four of these persons devote the largest part of their time to matters relating to the Interstate Commerce Commission.

To determine whether AWR is "found" in the District of Columbia, it is necessary to examine the amount and nature of the activities that are carried on within the District. The underlying principle with respect to venue under Section 4 of the Clayton Act seems to be that, in order to be considered as "found" in a judicial district, there must be a showing that

a business entity is doing business of such a character as to justify the inference that it has submitted itself to the local jurisdiction, People's Tobacco Co. v. American Tobacco Co., 246 U.S. 79 (1918), 62 L. Ed. 587. With respect to unincorporated associations, Judge Learned Hand, in Sperry Products, Inc. v. Association of American Railroads, et al., 132 F. 2d 408 (2d Cir. 1942), formulated a more objective test which would treat an unincorporated association as an entity for the purposes of venue. At page 411, the Court held:

"... that the defendant Association was present wherever any substantial part of its activities were continuously carried on."

The court finds ample evidence that AWR has continuously carried on a substantial part of its activities here.

A consideration of the nature of AWR's "business" is necessary at this point. The main purpose of the organization seems to be to advance the competitive position of the western railroads indirectly by promoting a favorable impression of rail transportation in the minds of the public as well as by acting as a collective spokesman for the western roads whenever legislative or administrative activities become relevant to their interests. These activities constitute the primary but not the exclusive function of AWR. The active representation of these railroads before legislative and administrative bodies here in Washington is essentially related to the purpose for which AWR was organized. In this fact lies the distinction between AWR's contacts with the District of Columbia and those of many other business organizations that perform activities in this district. For example, in Mueller Brass Co. v. Alexander Milburn Co., 80 U.S. App. D. C. 274, 152 F. 2d 142 (1945), the defendant manufactured metal goods such as rods, tubes and castings, and merely kept a contact man in the District of Columbia to keep in touch with certain government agencies and only incidentally to solicit orders. This was held not to constitute "doing business" under our

local venue statute (D. C. Code, 1951 Ed., Sec 13-103). This was a reasonable conclusion since defendant's "business" was the manufacture and sale of metal products. The agent's activity was ancillary to this business and only performed here because this happens to be the seat of government. In like manner, an out-of-town newspaper is, strictly speaking, engaged in the business of selling newspapers for profit within its circulation area, and, thus, maintaining a correspondent in Washington merely to gather news does not constitute "doing business" in the District of Columbia.

Neely v. Philadelphia Inquirer Co., 61 App. D. C. 334, 62 F2d 873 (1932).

Unlike these cases, the lobbying and other legal services performed by AWR personnel here in Washington are not merely collateral or subordinate to some primary commercial purpose - they constitute one of the principal functions for which AWR was designed.

It remains only to consider the quantum and continuity of the activity that took place within the District of Columbia. From the interrogatories so far answered by AWR, it appears that, in the period from 1950 to and including 1954, the employees of AWR spent about 1535 man-days in the District of Columbia carrying on the activities of AWR. Based on a work year of 260 days (52 weeks of five days each) for 18 employees totaled over a five year period, the result is that AWR employees were spending about 6% of their time in the District of Columbia on AWR matters. With respect to 1954 alone, the 328 man-days spent here amounts to about 7% of the total estimated time on the job spent by all 18 AWR employees during that year. In addition, Mr. Lyle H. Boren, AWR's Special Representative, spent a little over 7 work weeks here in 1954 and reported to the Clerk of the House of Representatives that he had spent \$2,620.64 in lobbying activity for the western railroads for the first quarter of 1956. All of these figures taken together indicate that AWR has continuously maintained sufficient contacts with the District of Columbia in order to make it amenable to suit and service of process under the principles prevailing in this circuit. cf. Frene,

et al v. Louisville Cement Co., 77 U.S. App. D.C. 129, 134 F2d 511 (1943).

In short, it is the finding of the Court that AWR is in the "business" of supplying lobbying, legal and public relations services to its members, and it is the conclusion of the Court that a substantial segment of this business was continuously carried on within the District of Columbia so that AWR can be said to be "found" within this district within the terms of Section 4 of the Clayton Act. Therefore, the motion of AWR to dismiss for improper venue and to quash service of process must be denied.

* * *

/s/ John J. Sirica

U. S. District Judge

February 25, 1958

(HEADING OMITTED) Civil Action 4056-54 Filed March 3, 1958

ORDER DENYING MOTION OF (2) THE
ASSOCIATION OF WESTERN RAILWAYS
TO DISMISS COMPLAINT AND TO QUASH
RETURN OF SERVICE.

Defendant (2) The Association of Western Railways having moved the Court to dismiss the Complaint herein as to it for improper venue, and to quash return of service of summons upon it, Plaintiff having opposed said motion, arguments having been heard thereon, and the Court having considered the aforesaid motion opposition and arguments and the issues raised thereby, as fully set forth in its opinion herein dated February 25, 1958, it is, by the Court, this 3rd day of March, 1958

ORDERED, That the motion of (2) The Association of Western Railways to dismiss the Complaint herein as to it for improper venue, and to quash return of service, be, and hereby is, denied.

AND IT IS FURTHER ORDERED, That the said defendant is hereby granted to and including 15 days from the date of entry of this Order within which to answer to the Complaint as Supplemented.

/s/ John J. Sirica
United States District Judge

Seen:

/s/ Paul F. McArdle

Attorney for
(2) The Association of Western
Railways for purposes of this Order

(HEADING OMITTED) Civil Action No. 4056-54 Filed March 17, 1958

ORDER

Upon consideration by the Court of the stipulation dated February 28, 1958, entered into by and between counsel for all defendants and counterclaimants, on the one hand, and Riss & Company, Inc., a Colorado corporation ("Riss Colorado") and Riss & Company, Inc., a Delaware corporation ("Riss Delaware"), on the other, and upon their joint motion, it is hereby

ORDERED, That Riss Delaware be substituted of record herein as Plaintiff and counterclaim defendant, in the place and stead of Riss Colorado, and that Riss Colorado be dismissed as a party to this action, and

IT IS FURTHER ORDERED, That the substitution of Riss Delaware as Plaintiff and counterclaim defendant herein is, and shall be, without prejudice to the rights of any party arising out of any proceedings already had in this action, and that Riss Delaware shall have such rights against, and shall be subject to such liabilities to, all defendants and counterclaimants as may heretofore have existed with respect to Riss Colorado.

Entered:

March 17, 1958

/s/ John J. Sirica
UNITED STATES DISTRICT JUDGE

Seen:

/s/ Paul F. McArdle

(HEADING OMITTED) Civil Action No. 4056-54 Filed March 18, 1958

ANSWER OF
EASTERN RAILROAD PRESIDENTS CONFERENCE
TO PLAINTIFF'S SUPPLEMENTAL COMPLAINT

Defendant, Eastern Railroad Presidents Conference, makes answer to the Supplemental Complaint of plaintiffs, to the extent to which

the allegations contained therein are applicable to it, as follows:

FIRST DEFENSE

1. This defendant is advised by counsel and therefore avers that the allegations of Paragraph 1 of the Supplemental Complaint require no answer. Insofar as such allegations may require answer they are denied.

2. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 2 of the Supplemental Complaint.

3. This defendant admits the allegations contained in the first and second sentences of Paragraph 3 of the Supplemental Complaint. This defendant denies the allegations contained in the last sentence of Paragraph 3 of the Supplemental Complaint, except that it admits that defendant Association of American Railroads (hereinafter sometimes called "AAR") transacts business in the District of Columbia. This defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 3 of the Supplemental Complaint, except that it admits (a) that general supervision and control of the affairs of defendant AAR are vested in a Board of Directors; (b) that defendant AAR has an organization and staff of paid personnel; (c) that the functions and operations of defendant AAR are divided into departments and bureaus, and one such department is the Public Relations Department; and (d) that assessments are levied upon member railroads of defendant AAR.

4. This defendant admits the allegations contained in the first sentence of Paragraph 4 of the Supplemental Complaint. This defendant denies the allegations contained in the last sentence of Paragraph 4 of the Supplemental Complaint, except that it is without knowledge or information sufficient to form a belief as to the truth of the allegation that the Association of Western Railways regularly

transacts business in the District of Columbia. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the second, third, fourth, fifth, sixth and seventh sentences of Paragraph 4 of the Supplemental Complaint.

5. This defendant admits the allegations contained in the first sentence of Paragraph 5 of the Supplemental Complaint. This defendant denies the allegations contained in the last sentence of Paragraph 5 of the Supplemental Complaint, except that it is without knowledge or information sufficient to form a belief as to the truth of the allegation that Traffic Executive Association - Eastern Railroads regularly transacts business in the District of Columbia. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the second, third, fourth, fifth, sixth and seventh sentences of Paragraph 5 of the Supplemental Complaint.

6. This defendant denies the allegations of Paragraph 6 of the Supplemental Complaint, except that it admits that it is an unincorporated association; that it has its only office at 143 Liberty Street, New York 9, New York; that its membership includes the President or other chief executive officers of the member railroads; that it employs a Chairman and has a staff of paid personnel; that it has an Executive Committee, other committees and subcommittees, and a Bureau of Information; that its expenses, including the salaries of its officers and employees are paid from assessments levied on member railroads; and that Carl Byoir and Associates, Inc. has an office and staff in the National Press Building in the District of Columbia.

7. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 7

of the Supplemental Complaint that Carl Byoir and Associates, Inc. is a corporation organized and existing under the laws of the State of New York and that it has its principal offices at 10 East 40th Street, New York, New York. This defendant denies the remaining allegations of Paragraph 7 of the Supplemental Complaint, except that it admits that Carl Byoir and Associates, Inc. is engaged in business as an independent public relations firm and has been retained as such by this defendant under written contracts commencing August 15, 1949; that Carl Byoir and Associates, Inc. has an office at 10 East 40th Street, New York, New York; and that Carl Byoir and Associates, Inc. maintains an office in the National Trust Building in the District of Columbia and regularly transacts business in the District of Columbia.

8. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 8 of the Supplemental Complaint.

9. This defendant avers that there is no Paragraph 9 of the Supplemental Complaint.

10. This defendant denies the allegations of Paragraph 10 of the Supplemental Complaint, except that it admits that AAR, Association of Western Railways, Traffic Executive Association - Eastern Railroads and this defendant are associations representing railroad interests; that Carl Byoir and Associates, Inc. was retained by this defendant as an independent public relations consultant under written contracts commencing August 15, 1949; and that the 85 railroads named as defendants include some of the largest railroads in the United States.

11. This defendant admits the allegations contained in the first two sentences of Paragraph 11 of the Supplemental Complaint. This defendant denies the allegations contained in the last two sentences of Paragraph 11 of the Supplemental Complaint. This defendant states that because of the vagueness and generality of the remaining allegations of said Paragraph

11, it is without knowledge or information sufficient to form a belief as to the truth of those allegations.

12. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 12 of the Supplemental Complaint.

13. This defendant denies the allegation of Paragraph 13 of the Supplemental Complaint.

14. This defendant denies the allegations of Paragraph 14 of the Supplemental Complaint.

15. This defendant denies the allegations of Paragraph 15 of the Supplemental Complaint.

16. This defendant denies the allegations of Paragraph 16 of the Supplemental Complaint.

17. This defendant denies the allegations of Paragraph 17 of the Supplemental Complaint.

18. This defendant denies the allegations of Paragraph 18 of the Supplemental Complaint.

SECOND DEFENSE

19. The Supplemental Complaint fails to state a claim upon which relief can be granted.

THIRD DEFENSE

20. The claim stated in the Supplemental Complaint for damages alleged to have been suffered by the plaintiff covers a period in excess of the period of limitation provided for by Title 12, Section 201 of the District of Columbia Code (1951 Ed.), and to that extent is barred by the provisions of that statute.

FOURTH DEFENSE

21. The Supplemental Complaint seeks to recover damages alleged to have been suffered by the plaintiff as an immediate or ultimate consequence of actions which in whole or in part fall within the exclusive

or primary jurisdiction of the Interstate Commerce Commission and hence are not cognizable by this Court in a suit brought under the anti-trust laws.

FIFTH DEFENSE

22. The Supplemental Complaint seeks injunctive relief under the anti-trust laws against common carriers subject to the provisions of the Act to Regulate Commerce, in respect of matters subject to the regulation, supervision or jurisdiction of the Interstate Commerce Commission. Under the provisions of Section 16 of the Clayton Act (15 USC Sec. 26) the plaintiff is not entitled to such relief.

SIXTH DEFENSE

23. The Supplemental Complaint fails to set forth an action arising under the constitution, laws or treaties of the United States and this Court lacks jurisdiction of the subject matter thereof since the citizenship of the parties is not diverse.

SEVENTH DEFENSE

24. The Supplemental Complaint is based in part upon allegations that defendants solicited federal and state officers and governments to enact or enforce legislation and regulations affecting the plaintiff, that defendants participated in administrative proceedings affecting the plaintiff and that defendants published statements relating to the plaintiff. The Supplemental Complaint seeks to enjoin the alleged activities. Such allegations do not constitute a cause of action under the anti-trust laws, since such laws would be unconstitutional if construed to forbid the exercise of defendants' constitutional rights of free speech and of assembly and petition, and would be further unconstitutional if construed to authorize injunctions limiting or prohibiting the exercise of such rights by defendants.

EIGHTH DEFENSE

25. To the extent that plaintiff has suffered any damage by reason of the action or inaction of the Interstate Commerce Commission

or other regulatory agencies, the enactment or failure of enactment of any statutes, ordinances or regulations, or the enforcement or lack of enforcement of any statutes, ordinances or regulations, such damages are the result of sovereign acts of the states or federal governments and not cognizable in this action.

NINTH DEFENSE

26. Plaintiff seeks injunctive relief and to recover damages with respect to alleged impairment, restriction and impeding of, and alleged injury to, transportation operations which were, during the period of time referred to in the Supplemental Complaint, conducted by the plaintiff in violation of provisions of the Interstate Commerce Act and regulations promulgated thereunder and in violation of state laws and regulations.

TENTH DEFENSE

27. Plaintiff comes into this Court with unclean hands and is barred from obtaining injunctive relief or damages by its own illegal conduct.

A. For many years plaintiff has operated and continues to operate in the interstate transportation of dangerous explosives without legal authority therefor granted by the Interstate Commerce Commission.

B. For many years plaintiff has committed and continues to commit violations of the Interstate Commerce Act and of the Motor Carrier Safety Regulations promulgated by the Interstate Commerce Commission.

C. Commencing as early as 1950 plaintiff has failed and neglected to file reports and keep accounts, records and memoranda as required by the rules, regulations and orders promulgated and issued by the Interstate Commerce Commission.

D. For many years plaintiff has violated and continues to violate the laws and regulations of the States in which it operates in the interstate transportation of dangerous explosives and other freight.

E. Commencing as early as 1950 plaintiff has conducted and continues to conduct its operations with inadequate, unsafe, improper

equipment, has followed unsafe and careless practices and has disregarded the safety and welfare of other users of the highways.

(Signatures omitted)

Attorneys for Eastern Railroads Presidents
Conference

Of Counsel:

Covington & Burling
Montgomery, McCracken, Walker & Rhoads

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Answer was served upon the plaintiff by delivering a copy thereof to A. Alvis Layne, Jr., Pennsylvania Building, Washington 4, D. C., attorney for plaintiff, on March 18, 1958.

(Signature omitted)

(HEADING OMITTED) Civil Action 4056-54 Filed March 28, 1958

MOTION

Now comes defendant, The Association of Western Railways, and moves this Court to vacate and set aside the order entered by it on March 3, 1958, on the opinion issued by the Court on February 25, 1958, for the reason that the said order and opinion are based upon errors of fact and law as more fully set forth in the Memorandum of Points and Authorities and the affidavit of Walter R. Nugent filed herewith.

SIDLEY, AUSTIN, BURGESS & SMITH
11 South LaSalle Street
Chicago, Illinois

Of Counsel

(Signatures omitted)

(HEADING OMITTED) Civil Action 4056-54 Filed March 28, 1958

AFFIDAVIT

WALTER R. NUGENT, being first duly sworn, deposes and says:

1. He is the Assistant Auditor of the Association of Western Railways.

2. That he has compiled the following data relating to the

expenditures and personnel of the various parts of The Association of Western Railways for the calendar year 1954 from the books and records of said Association, and that said information is true and correct to the nearest dollar:

<u>Department</u>	<u>Number of Employees</u>	<u>Salary & Payroll Taxes</u>	<u>Other Expenses</u>	<u>Total Expenditures</u>
Executive	6	\$ 68,552	\$ 14,619	\$ 83,171
Law	15	132,637	96,774	229,411
Public Relations	9	86,155	53,692	139,847
Labor	14	122,390	628,410	750,800
General Bureaus (Accounting and Administrative)	87	342,710	188,987	531,697
Western Weighing and Inspection Bureau	<u>745</u>	<u>3,137,669</u>	<u>681,236</u>	<u>3,818,905</u>
Total	<u>876</u>	<u>\$3,890,113</u>	<u>\$1,663,718</u>	<u>\$5,553,831</u>

3. The working force today is that needed to perform the functions assigned to the Association, and, in this respect, the year 1954 is representative of the period 1954 through 1957 as to distribution of the total number of employees and total expenditures among the above-named parts of The Association of Western Railways.

Further affiant saith not.

(Signature omitted)

Subscribed and sworn to before
me this 26th day of March, 1958.

/s/ Beatrice F. Cox
Notary Public

Defendants

No. 4056-54

AFFIDAVIT

COUNTY OF COOK)

3. The Western Weighing and Inspection Bureau is not, and has never been, a part of or subject to the direction and control of the Executive Committee-Western Traffic Association or of any of the

other suborganizations of the Western Traffic Association.

Further affiant saith not.

/s/ Thomas H. Maguire
Thomas H. Maguire

Subscribed and sworn to
before me this 8th day
of April, 1958.

/s/ A. F. Hucksold
Notary Public

(HEADING OMITTED) Civil Action No. 4056-54 Filed April 9, 1958

AFFIDAVIT

FRED A. PIEHL, being first duly sworn, deposes and says:

1. He is the Manager, Western Weighing and Inspection Bureau, and as such is primarily responsible for the conduct of its day-to-day affairs.
2. The Western Weighing and Inspection Bureau is a subdivision of The Association of Western Railways, under the Executive Department.
3. The Advisory Committee of the Western Weighing and Inspection Bureau is appointed by the President of The Association of Western Railways with the advice of the Executive Committee of the Association.
4. James F. Blair, General Manager, The Association of Western Railways, exercises general supervision over the Western Weighing and Inspection Bureau, and is the person to whom he reports.
5. Western Weighing and Inspection Bureau is not an organization established pursuant to an agreement approved by the Interstate Commerce Commission under Section 5a of the Interstate Commerce Act, and it is not a part of or subject to the direction of Western Traffic Association.

6. The Western Weighing and Inspection Bureau is not a "rate bureau," and the functions which it performs are not rate-making functions.

Further affiant saith not.

/s/ Fred A. Piehl
Fred A. Piehl

Subscribed and sworn to before
me this 8th day of April, 1958.

/s/ A. E. Hucksold
Notary Public

(HEADING OMITTED) Civil Action No. 4056-54 Filed April 9, 1958

AFFIDAVIT

WALTER R. NUGENT, being first duly sworn, deposes and says:

1. The General Bureaus referred to in his affidavit of March 26, 1958, are those bureaus of The Association of Western Railways which perform accounting services, typing services, mailing services, and similar administrative functions on behalf of The Association of Western Railways.

2. These bureaus also perform services on behalf of other railroad organizations, including some of the organizations established pursuant to agreements approved under Section 5a of the Interstate Commerce Act, for which they are paid a fee.

3. The activities referred to in paragraph 2 above are of the kind described in paragraph 7 of the affidavit of Daniel P. Loomis, dated December 6, 1954, a copy of which is attached to "Plaintiff's Reply to Motion of (2) Association of Western Railways Filed March 27, 1958" and in Answer No. 12 to the interrogatories served on The Association of Western Railways on January 20, 1955, executed July 26, 1955.

4. The employees of the General Bureaus are employees of The Association of Western Railways.

5. The General Bureaus are under the supervision of the General

Manager and of the Auditor of The Association of Western Railways.

Further affiant saith not.

/s/ Walter R. Nugent
Walter R. Nugent

Subscribed and sworn to
before me this 8th day of
April, 1958.

/s/ A. F. Hucksold
Notary Public

(HEADING OMITTED) Civil Action 4056-54 Filed April 22, 1958

STIPULATION

It is hereby stipulated and agreed by the parties hereto through their respective counsel that the attached pages from the deposition of Joseph H. Hays taken on August 1, and August 2, 1955 be considered as part of the record of this Court for the purpose of the motion of the Association of Western Railways to vacate and set aside order entered on March 3, 1958.

(Signatures omitted)

Whereupon, --

JOSEPH H. HAYS

was called as a witness and, having been first duly sworn by the Notary Public, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WRIGHT:

- Q Would you state your full name and address?
A Joseph H. Hays, 280 Union Station Building, Chicago.
Q Would you state your occupation, please?
A I'm a lawyer.
Q Employed by whom?
A The Association of Western Railways.
Q And you're employed full time by them?

A Yes.

Q You do legal work for anyone else?

A No.

Q And how long have you been employed as a lawyer by the Association of Western Railways?

A It's been about seven years.

Q Will you just tell us in general what the nature of your duties has been during that time?

A Oh, I'm head of the Law Department for the Association of Western Railways.

Q And that Law Department consists of what?

A Oh, several lawyers and clerical force.

Q Now, who are the other lawyers that are in the department with you?

A Mr. Amos M. Matthews, Mr. J. W. Nisbet, Mr. Ed White, Mr. J. D. Feeney, Mr. Robert Bernard -- I've forgotten his middle initial -- and Mr. Robert Munsell. And there's Mr. George Hester. Well, he isn't a lawyer. Excuse me.

Q The ones you have named were all lawyers?

A Yes.

Q What's the general nature of the legal services that your department performs for the Association?

A Oh, advice as to legal matters to the Association and defense of cases in which the member roads are concerned. Collection and dissemination of information with reference to matters that member roads are concerned with.

Q Is that legal information?

A Legal and factual.

Q And in that connection these lawyers you named, do they have any special functions, or can you tell us briefly, for example, what

Mr. Matthews' duties are?

A Oh, Mr. Matthews primarily assists me. He's concerned with strictly legal brief-writing and legal matters. He engages some of the time in the trial of cases. Mr. Nisbet and Mr. White and Mr. Bernard and Mr. Feeney -- well, not Mr. Feeney -- but those three are engaged almost full time in the handling of matters before the Interstate Commerce Commission. Mr. Feeney part time in matters before the Interstate Commerce Commission and the Civil Aeronautics Board and other administrative agencies. Mr. Munsell is a new man who does some clerical work, assists other counsel about the office.

Q Now, as I understood you to say, you and your department perform these services on behalf of these member railroads which are involved in certain proceedings?

A Most of the time.

Q I suppose the particular railroads that are involved vary, do they, from proceeding to proceeding?

A That's right.

Q Now, are those individual member railroads for whom you perform these services billed by the Association for those services?

A Generally not, except to the extent that their general billing includes the cost of the service.

Q You mean by general billing the assessment that is made for the general expenses of the Association?

A That's right.

Q Other than that, there is no reimbursement by the --

A For services, no.

Q For services?

A No.

Q You say there are some employees of your Law Department

who are not lawyers?

A Yes.

Q What is the nature of the service they render?

A Well, one is a research engineer.

Q Who is that?

A Mr. George Hester.

Q And what kind of research does he perform?

A Oh, engineering research, factual data, tax research.

Q Well, what kind of engineering research with respect to what kind of transportation?

A Primarily with respect to highway transportation. Not exclusively.

Q And any others?

A Yes. There's Mr. Frank E. Haas who devotes most of his time to relationships with the railroad labor organizations. And Mr. Lyle E. Boren.

Q Before you get through with Mr. Haas, what kind of relationships are you referring to there?

A Oh, the discussion of problems and matters with which the labor organizations and members are concerned, problems which are of mutual interest to both the railroad companies and the men and problems which are sometimes adverse in character.

Q Those are principally legislative matters?

A Some legislative matters.

Q What others would be of a non-legislative character?

A Oh, some of the operating relationships between the men and the companies -- transportation, disciplinary action. Generally, however, matters that have some relationship to legislation.

Q Well, does Mr. Haas participate in any of the actual contract negotiations with the labor representatives?

A Not directly, no.

Q How does he do it indirectly?

A You can't say that he participates in the negotiations, no.

Q Well, he consults with Mr. Loomis in that connection?

A Occasionally, sir.

Q And you mentioned Mr. Hester and Mr. Haas. Are there any other employees of the Law Department who are not lawyers?

A Yes. There's Mr. Boren.

Q What is his first name?

A Oh, he's primarily concerned with legislative matters.

Q No, I said what is his first name?

A Lyle E. Boren

Q What did you say his duties were?

A Primarily concerned with legislation.

Q And that would include both Federal and State legislations?

A Yes.

Q What does he do in that connection?

A Oh, he confers with interested parties and discusses our legislative problems.

Q Sometimes gives testimony?

A I don't recall that he ever has given any testimony.

Q And who else is there that's not a lawyer in the department?

A We have a man on part-time duty.

Q These are all full-time employees that you mentioned?

A Yes. A man on part-time duty -- Colonel John W.

Wheeler, who is also an engineer.

Q What kind of an engineer?

A Civil engineer.

Q And what are his duties?

A Oh, to advise on factual questions and to aid and assist

in research, confer with persons regarding legislative matters.

Q Well, what kind of factual questions?

A That are in an engineering category.

Q Well, is this again with respect to truck transportation?

A Some. Highway matters. Grade-crossing separations.

Q And you say he's a part-time employee? How much of his time?

A He's been ill for quite some time. He was injured about a year ago.

Q He's not employed by someone else the rest of the time then?

A Yes, he's employed by the Burlington Railroad.

Q And does he have any other employment other than the Burlington and the AWR?

A I don't believe so. He operates a farm.

Q Now, is there anyone else in the Law Department?

A I think that's all.

Q These duties that the Law Department has, have those remained substantially the same during this seven-year period that you've been head of the department?

A Oh, generally the same. There's no identical sameness, of course.

Q Prior to that time what were your duties? What was your occupation?

A I was a lawyer.

Q Employed by whom?

A The Western Association of Railway Executives.

anything, you did that concerned truck transportation.

A I represented --

MR. BALL: Just a minute. I instruct the witness not to answer as the form of the question is one that cannot be answered without going into the activities of this witness as an attorney for his client and necessarily involving communications, the essence of it, between the attorney and his client.

BY MR. WRIGHT:

Q Mr. Hays, after you were employed by the WARE, did you do anything other than give legal advice to your employer?

A Yes.

Q What was the nature of that activity?

A Activity on behalf of my clients not necessarily involving advice.

Q Yes. Well, what was it?

A Oh, appearance in cases before the Interstate Commerce Commission.

Q Anything else?

A Study. Accumulation of facts.

Q What did you study and what facts did you accumulate?

A Legal opinions, pending legislation.

Q I still don't think you answered --

A Statistical data.

Q What is the statistical data and factual studies you made? What did they concern?

A Taxes paid by railroads and tax matters and -- will you read the question?

(Question read by reporter.)

A Oh, I can't say in any detail. Tax matters and operating revenues and operating expenses. A great many things.

Q That's all railroad data you have been referring to? Is that right?

A And data by -- Tax matters and revenues by all forms of transportation.

Q What did you do specifically with respect to truck transportation?

A I couldn't answer that question. I --

Q You have no recollection?

A Oh, I have a recollection that's quite general in terms. I did what I could to know what was happening.

Q Well, what was happening in what fields?

A In all transportation.

Q You made no special effort to keep abreast of what was happening in the truck transportation field?

A Yes, I made an effort to keep abreast of what was happening in the truck transportation.

Q And when you say what was happening, you refer to what kind of events?

Q And what was the nature of this highway department or activity that the law department carried on?

A The nature of the law department is that which I've explained earlier today.

Q Well, specifically, whatever the work was that then was done with respect to truck or highway transportation remained in the law department, did it, of AWR?

A At what time do you refer?

Q This is when AWR absorbed WARE.

A I wouldn't say that. I'd say this: That the Law Department of the WARE was absorbed by the AWR. In general terms the same general functions were carried on since the absorption.

Q That's what I was getting at -- whether there was any

change in functions, specifically with reference to whatever activity was carried on in connection with highway transportation.

A You understand there are changes from time to time in detail, and there's no set directive under which the law department functions. I can recall some changes.

Q Well, what are those?

A One I recall is that prior to the absorption of the WARE the law department of the WARE was concerned in the defense of the anti-trust case out at Lincoln, Nebraska. That function was not picked up I do not believe by -- The case ****

A If you ask me in general terms, yes, that's the best I can do.

Q You filed, did you not, on behalf of yourself and the AWR a statement of purpose of the organization under the Federal Lobbying Act?

A I might have. I think I did.

Q I will show you this typewritten document here which we will mark for identification so we know what we are talking about.

(The document referred to above was
marked Hays Exhibit No. 41 for identification.)

BY MR. WRIGHT:

Q I'm just showing you this document marked Hays Exhibit 41 there and ask you if you recognize that as an accurate copy of the statement of purpose you filed under the Lobbying Act.

A One of the statements you have shown me is three typewritten pages, and if you want to take a few moments' recess -

Q Sure. Take time to read it.

(Brief recess.)

THE WITNESS: Will you read the question?

(Question read by reporter.)

THE WITNESS: The exhibit 41 that you have just submitted to me is, as nearly as I can ascertain, not having made accurate comparison, an accurate statement, an accurate copy of a statement filed on behalf of the Western Association of Railway Executives prior to its absorption by the Association of Western Railways.

BY MR. WRIGHT:

Q That statement was filed and prepared by you, was it not?

A I think part of this was prepared by me.

Q Well, who else do you think may have --

A I just don't remember. It's quite some time ago. It was in 1948, wasn't it, or 1946?

Q I think that's a 1948 statement, just preceding the take-over of WARE by AWR.

A On the contrary, this was filed in 1946 I believe. 1948. Yes, first quarter of 1948.

Q And then you filed a further statement, did you not, after the WARE was absorbed by AWR?

A I don't remember if there was a further statement filed or registration filed. There have been reports under the Lobbying Act filed since then.

Q And in those subsequent reports that you filed on behalf of AWR, you simply incorporated in response to the question as to the statement of purpose the statement you had previously filed there on behalf of WARE?

A I can't say that that was done.

Q Well, let me call your attention to --

A I'd have to refer to what was filed.

Q Well, in any event, you didn't subsequently file, did you, any further different statement of purpose than this in connection with the reports you filed on behalf of the AWR?

A I can't say of my own knowledge for sure.

Q As far as you recall?

A As far as I recall I just don't know.

Q Well, is this statement here that you filed on behalf of the WARE to the best of your knowledge an accurate statement of the purposes of WARE?

A I don't believe that it could be properly said to be. Perhaps there should have been an amended statement showing some difference in the setup. You understand this statement was filed for lobbying purposes to show in general terms the purpose of the organization, as to whether its principal purpose was for lobbying or whether it was not. And I can't say that it does now accurately describe the function or purpose of the AWR.

Q No, that was not my question. My question was whether that was an accurate statement of the purposes of WARE as of the time it was filed.

A Well, it's a little broad. Its principal purpose is accurately stated in the first sentence of the third paragraph of the portion marked "Statement."

Q Well, will you read that so we know what you're --

A The sentence which reads, "The principal purpose of this Association is to deal with matters which are regional in character and which are of common concern to the railroads of the Western District."

Q Now, the --

A The next sentence to the effect that the Association afforded means for handling or supervising joint facilities could be clarified, could have been more accurately stated as to the specific point you make here.

Q Well, how would you state it more accurately?

A Well, it says here the adjustment of publication of rates. The WARE did not adjust or publish rates. It did afford then a means of supervising joint facilities of Western lines which did so.

Q Now, those joint facilities were what?

A The traffic bureaus and rate publication bureaus that you've just been discussing.

Q Yes. Now, are there any other respects in which you think the statement should be amplified?

A May I inquire here a minute of counsel, who has made some investigation -- I'm not sure about some of these functions --

Q Well, now, if counsel had something to do with the preparation of it, I suppose it might be helpful, but if --

A Counsel did --

Q If it's just your work, I think what we'd like to have is your own best interpretation of the statement there, unaided by him.

A Well, the only reason I asked is whether there's been any change here -- Now, for instance, the weighing and inspection of freight. The WARE did afford means of supervising the Western Weighing and Inspection Bureau from a purely administrative standpoint -- as to expenditures and efficiency in the administrative affairs. Whether that is or is not now a part of the AWR I can't say.

Q Now, my first question was addressed entirely to the question of whether that was an accurate statement as of the time it was made with respect to the activities of WARE.

A Well, it generally did afford means of supervising from an administrative standpoint those activities, although the Western Weighing and Inspection Bureau was always a separate and distinct entity.

Q Yes. Now, are there any other respects in which you think --

A Yes, the promotion of freight and passenger traffic. Joint facilities participated in for those purposes were separate and distinct entities, but the supervision of their financial affairs, and "supervision" is probably a little bit *****

of the Association.

Q Yes. Well, now --

A The Lobby Act, as you recall, required a statement of the principal purpose of the Association, and the second sentence is intended to modify the first sentence to indicate that the principal purpose of the Association was not to affect legislation. It was not principally a lobby organization.

Q Yes, I understand that, and I want you to tell me if you can what specific rate activity you were referring to in that sentence.

A Well, the rate activity referred to there was the -- that it afforded means of supervising, and that in a most limited extent, the joint facilities then existing with reference to the publication of rates and so on. The rate organizations were always separate and distinct from the WARE.

Q What were those means of supervision you were referring to?

A Perhaps means of supervision is a statement that is broader than it might be for the purposes for which you inquire. The only supervision that was exercised then by the AWR -- by the WARE -- and I think the same situation now prevails -- was the handling of the accounting and expense matters for those bureaus.

Q What you were referring to there by means of supervision was the means for handling the control of the financing and expenditures of the rate bureaus?

A Purely the administrative end.

Q Yes. And those means, whatever they were, were taken

over by AWR along with the other WARE functions, were they not?

A No, I might qualify that further. At that time there was some concern by the WARE as to the supervision, the economy and general administrative expenses. With the adoption of the Bulwinkle Act there was definite care exercised to be sure that there was no supervision of any character exercised by the AWR.

Q Now, --

A One of the distinct objectives was to have a clean-cut line of demarcation between the two of them because of the provisions of Section 5(a) of the Interstate Commerce Act.

Q Well, I assume that would not apply to whatever lobbying activities there were. I suppose in so far as it involved federal legislation it was carried on in the District.

A Not necessarily carried on in the District. The Lobby Act would not allow lobbying in the District.

Q Well, you did from time to time carry on certain activities with respect to federal legislation, did you not?

A The WARE did, yes.

Q And that has also been true of the AWR, has it not?

A Some.

Q And in that connection, you and other employees of the AWR made visits to the D. C., haven't you?

A Yes.

Q And specifically, with reference to these visits that are listed in your interrogatory answers that were made by you -- and I am referring to the list that appears in your answer, or rather AWR's answer to Interrogatory 20 -- where the statement is made that "All of Mr. Hays' visits to the District of Columbia have been in connection with proceedings before the Interstate Commerce Commission, courts and other federal administrative agencies in connection with federal legislation or appearances

or to attend meetings of the Association of American Railroads or one or more of its committees."

Now, by looking at the dates listed there, could you tell *****

right.

Q And I want to find out, if I can, if it is not AWR's business, just whose business it was that you were engaged in at the time you were making these trips.

A Well, generally the business of individual member roads, in connection with cases before the ICC, for example.

Q Now, you say the trips you made in connection with the proceedings before the ICC, those were all made on behalf of member railroads of the AWR who were parties to those proceedings.

A Yes.

Q And that representation, however, was something which, as I understand it -- for which you were retained by the member road.

A No. That is, you mean in the sense that you were paid special fees?

Q Yes.

A No.

Q That service was rendered to them, was it not, as a part of whatever service the member roads received from the AWR for their respective contributions, was it not?

A Well, I don't know how you put it, but it was paid for by the AWR.

Q But it was not specially paid for by them, was it?

A I don't believe so. Certainly not the compensation.

P R O C E E D I N G S

MR. WRIGHT: Shall we resume?

Whereupon, --

JOSEPH H. HAYS

resumed the stand, and, having been previously duly sworn, was examined and testified further as follows:

DIRECT EXAMINATION (RESUMED)

MR. BALL: We have some corrections we might get out of the way.

On page 80, Mr. Haus' answer reads: "The Lobby Act would not allow lobbying in the District." The correct answer that Mr. Hays gave reads this way: "The Lobby Act is not alone lobbying in the District."

MR. WRIGHT: This is what line?

MR. BALL: In the fifth line.

MR. WRIGHT: The fifth line you want to change?

MR. BALL: "The Lobby Act is not alone lobbying in the District."

On page 86 in the sixth line: "There might have been some with my name next to it." The word was "annexed" rather than "next."

On the same page, the answer: "You said paid for. The expense incurred in connection with them was paid by the AAR." It should read "AWR." The contex made that clear, and I'm sure that was said "AWR."

(HEADING OMITTED) Civil Action No. 4056-54 Filed April 28, 1958

ANSWER OF PLAINTIFF, RISS & COMPANY, INC.,
TO SUPPLEMENTAL COUNTERCLAIMS OF (8) THE
ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,
(9) GULF, COLORADO & SANTA FE RAILWAY COMPANY,
(10) PANHANDLE & SANTA FE RAILWAY COMPANY,
(16) CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY,
(17) THE COLORADO AND SOUTHERN RAILWAY COMPANY,
(18) FORT WORTH AND DENVER RAILWAY COMPANY,
(19) CHICAGO GREAT WESTERN RAILWAY COMPANY,
(21) CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY, (22) CHICAGO AND NORTH WESTERN
RAILWAY COMPANY, (23) CHICAGO, ROCK ISLAND AND
PACIFIC RAILROAD CO., (26) THE DENVER & RIO GRANDE

WESTERN RAILROAD COMPANY, (32) GULF, MOBILE & OHIO RAILROAD COMPANY, (33) ILLINOIS CENTRAL RAILROAD COMPANY, (36) MIDLAND VALLEY RAILROAD COMPANY, (37) KANSAS, OKLAHOMA & GULF RAILWAY CO., (38) OKLAHOMA CITY-ADA-ATOKA RAILWAY COMPANY, INC., (39) THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY, (40) MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, (70) ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY, (71) ST. LOUIS SOUTHWESTERN RAILWAY LINES, (76) UNION PACIFIC RAILROAD COMPANY, (78) WABASH RAILROAD COMPANY, and (87) CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY.

Plaintiff, Riss & Company, Inc. ("Riss"), for its answer to the supplemental counterclaims of the above-identified defendants, served February 18, 1958, states its defenses as follows:

First Defense

1. Riss adopts, and incorporates by reference herein, each and every numbered paragraph of its replies, served February 25, 1957, to the original counterclaims of the above-named defendants.

2. Riss admits the allegations of Paragraph 2 of these supplemental counterclaims.

3. Riss denies each and every allegation of Paragraph 3 of these supplemental counterclaims.

4. In response to Paragraph 4 of these supplemental counterclaims, Riss adopts, and incorporates herein by references, Paragraph 2 of this answer; admits the allegations of Paragraphs 3 and 5 of the original counterclaims of these defendants; denies that any of these counterclaimants, at all times material hereto, has offered to transport explosives pursuant to lawful authority and duly published tariffs, but otherwise admits the allegations of Paragraph 6 of the said original counterclaims; denies each and every allegation of Paragraph 7 of the said original counterclaims, except that it admits that certain aspects of the interstate operations of these counterclaimants are subject to the provisions of Part I of the

Interstate Commerce Act, 49 U. S. C. Secs. 1 through 27; admits the allegations of Paragraph 8 of said original counterclaims, except that it denies (a) that any of these counterclaimants competes with any other common carrier of property by rail in the movement of ammunition and explosives at any point served by such counterclaimant, and (b) that any of these counterclaimants conducts its operations in full compliance with federal and state laws applicable to it; and admits the allegations of the last sentence of Paragraph 9 of the said original counterclaims, and admits as well (a) that Riss is a motor common carrier in interstate commerce of general commodities (including munitions and explosives), with certain exceptions specified in the certificates of public convenience and necessity issued to it by the Interstate Commerce Commission, in various states including those named in said Paragraph, (b) that it is engaged in intrastate commerce as a common carrier of property by motor vehicle in the states of Kansas, Illinois, Oklahoma and Missouri, and (c) that it serves all points which it is authorized to serve, but denies each and every other allegation of said Paragraph 9.

5. Riss denies each and every allegation of Paragraph 5 of these supplemental counterclaims.

6. Riss denies each and every allegation of Paragraph 6 of these supplemental counterclaims.

7. In response to Paragraph 7 of these supplemental counterclaims, Riss admits that none of these counterclaimants knows the amount of the damages assertedly caused it by the alleged actions of Riss described in these supplemental counterclaims; denies that the books of Riss or the counterclaimants disclose any damages to any of these counterclaimants from any of the actions alleged in these supplemental counterclaims, and alleges that such supplemental counterclaims have been filed in bad faith, for the sole purpose of impeding the trial of the complaint herein.

8. Riss denies each and every allegation of Paragraph 8 of these

supplemental counterclaims.

9. Riss denies each and every allegation of Paragraph 9 of these supplemental counterclaims.

10. In response to Paragraph 10 of these supplemental counterclaims, Riss adopts, and incorporates by reference herein, Paragraph 3 of this answer in its entirety.

11. Riss denies each and every allegation of Paragraph 11 of these supplemental counterclaims.

12. Riss denies each and every allegation of Paragraph 12 of these supplemental counterclaims.

13. In response to Paragraph 13 of these supplemental counterclaims, Riss admits that none of these counterclaimants knows the amount of the damages assertedly caused it by the alleged actions of Riss described in these supplemental counterclaims; denies that the books of Riss or the counterclaimants disclose any damages to any of these counterclaimants from any of the actions alleged in these supplemental counterclaims, and alleges that such supplemental counterclaims have been filed in bad faith, for the sole purpose of impeding the trial of the complaint herein.

14. Riss denies each and every allegation of Paragraph 14 of these supplemental counterclaims.

Second Defense

15. These supplemental counterclaims allege, and in large part are based upon, matters occurring prior to the period of limitations provided for in 15 U. S. C. Sec. 15b and District of Columbia Code, Title 12, Section 201.

WHEREFORE, Plaintiff Riss & Company, Inc. asks judgment dismissing these supplemental counterclaims, with the imposition of appropriate penalty costs.

(Signatures omitted)

Certificate of Service

I certify that I have this 28th day of April, 1958, served the foregoing Answer upon all counterclaimants in this action by mailing a copy thereof, first class mail, postage prepaid, to the attorney of record for each such counterclaimant.

(Signature omitted)

(HEADING OMITTED) Civil Action No. 4056-54 Filed April 28, 1958

ANSWER OF PLAINTIFF, RISS & COMPANY, INC.,
TO SUPPLEMENTAL COUNTERCLAIM OF (66) THE
PENNSYLVANIA RAILROAD COMPANY

Plaintiff, Riss & Company, Inc. ("Riss"), for its answer to the supplemental counterclaim of defendant (66), served February 17, 1958, states its defenses as follows:

First Defense

1. Riss adopts, and incorporates by reference as if fully set forth herein, each and every numbered paragraph of its reply, served February 25, 1957, to the original counterclaim of the above-named defendant.
2. Riss admits the allegations of Paragraph 2 of this supplemental counterclaim.
3. Riss denies the allegations of the first sentence of Paragraphs 3 and 8 of this supplemental counterclaim; and in response to the second sentence of said Paragraphs, adopts and incorporates herein by reference, Paragraph 2 of this Answer, denies each and every allegation of Paragraphs 5, 6, 7, 9 and 10 of the original counterclaim; admits the allegations of Paragraph 3 of the original counterclaim; admits the allegations of the first sentence of Paragraph 2 of the original counterclaim, but denies the allegations of the second and third sentences thereof, and admits the allegations of Paragraph 4 of the original counterclaim, except that it denies that this counterclaimant competes with any other common carrier by rail

for the business of transporting ammunition and explosives, and denies further that there is any competition whatever between or among any common carriers by rail for the transportation of ammunition and explosives.

4. Riss denies each and every allegation of Paragraphs 4, 5 and 7, and 9, 10 and 12 of this supplemental counterclaim.

5. In response to Paragraphs 6 and 11 of this supplemental counterclaim, Riss admits that this counterclaimant does not know the amount of damage to it assertedly caused by any of the alleged actions of Riss described therein, but otherwise denies the allegations of Paragraphs 6 and 11; denies further that this counterclaimant has sustained any damage whatsoever as a result of any actions of Riss, and alleges that this supplemental counterclaim has been filed in bad faith for the sole purpose of impeding the trial of the complaint herein.

Second Defense

6. This supplemental counterclaim alleges, and in large part is based upon, matters occurring prior to the period of limitations provided for in 15 U.S.C. Sec. 15b and District of Columbia Code, Title 12, Section 201.

WHEREFORE, Plaintiff Riss & Company, Inc. asks judgment dismissing this counterclaim with the imposition of appropriate penalty costs.

{Signatures omitted}

Certificate of Service

I certify that I have this 28th day of April, 1958, served the foregoing Answer upon all counterclaimants in this action by mailing a copy thereof, first class mail, postage prepaid, to the attorney of record for each counterclaimant.

(Signature omitted)

(HEADING OMITTED) Civil Action No. 4056-54 Filed April 29, 1958

MEMORANDUM

On March 3, 1958, this Court entered an order based on its opinion rendered February 25, 1958. The effect of the order was to deny the motion of defendant Association of Western Railways to dismiss the complaint as to it for lack of proper venue. AWR now moves to vacate the above order based on asserted errors of fact and of law made by the Court in reaching its decision. This being a motion addressed to the sound discretion of the Court, it will only be granted if the Court finds that the interests of justice so demand.

The principal contention of counsel for AWR is that the Court based its conclusion upon erroneous facts when it determined the relative amount of time spent by AWR employees in the District of Columbia. With respect to the overall size of AWR, counsel for defendant made the following somewhat vague statement on page 209 of the transcript of oral argument of January 13, 1958: "It (AWR) handles a budget of many millions of dollars serving an accounting function representing railroad activities", and elsewhere counsel had adverted to the "large" staff and "extensive" offices of AWR in Chicago. On the other hand, plaintiff in its interrogatories concerning venue had sought to find out the exact figures on the employment and payroll of the entire AWR organization. For example, interrogatory 3-0 of those filed January 20, 1955 requested the following information: "How many persons are employed by the A. W. R. ?" In their objections to this and other interrogatories filed January 31, 1955, counsel for AWR stated:

"Interrogatories Nos. 3A, 3B, 3H, 3I, 3J, 3L, 3O, 3P, and 3Q, request information concerning the 'progress' of the A. W. R. and concerning its internal organization and operation. The same comments apply. The information is irrelevant to the only issues now before the Court, and is sought for obvious purposes which are clearly improper."
(Emphasis supplied)

During the course of oral argument on May 23, 1955 before Judge Schweinhaut in connection with these same objections to interrogatories, Mr. Ball, Counsel for AWR stated at page 32a of the transcript:

"I wanted Mr. Layne to make that statement, because it seems to me that is the one proper purpose of interrogatories at that time, is to relate to the matters that might bear upon the decision of venue. And we have already answered those interrogatories, which we believe relate to the question of venue. We have already filed our answers on those interrogatories. The ones that we are presently objecting to answering are those that we think do not relate to the issue as to venue, but relate to the general issues raised by the complaint generally against -- in other words, the substance of their law suit, rather than the issue of venue."

In considering this motion to vacate, the Court has carefully considered the pertinent parts of the record before it at the time the motion to dismiss was argued including briefs, affidavits, depositions and arguments, plus the stipulations of counsel on both sides as to the portions of Mr. Hays' deposition to be considered as part of the record. On this issue, the Court finds that its earlier ruling is amply supported by the matters of record when the motion was pending. In unavoidably complex litigation such as this, it would be extremely unwise for the Court to permit counsel to reopen each and every motion after it had been briefed, argued and decided merely to have the Court consider for the first time information which could have easily been furnished at the hearing.

Counsel's other contentions amount to little more than differences of opinion with respect to the inferences to be drawn from the data of record in the case or with respect to which one of several competing versions of the facts seems on the whole more probably accurate. Divergent points of view either as to the law or to the facts certainly form an insufficient basis for vacating an order entered after full briefing and argument by counsel and careful consideration by the Court.

However, counsel has pointed out to the Court two minor errors in its opinion. On page 5 of the opinion the Court quotes a passage as coming from the first quarterly report of AWR for 1948 to the Clerk of the House of Representatives. Actually the quotation comes from the report of the Western Association of Railroad Executives - AWR's predecessor organization - for the first quarter of 1948. The affidavit of Mr. Joseph H. Hays, General Counsel of AWR, filed October 21, 1955 shows that the identical statement also appears in AWR's report for the last quarter of 1948.

Furthermore, it was not correct to have said on page 8 of the opinion that Mr. Lyle Boren spent \$2620.64 on lobbying activities for AWR for the first quarter of 1956. The opinion should have stated that Mr. Boren received that amount as salary for his work on behalf of AWR during the above period.

Apart from these minor errors, the findings of the Court were based precisely on what was presented to it during the arguments and what was a matter of record at that time. Justice does not require that the order be vacated merely because counsel at this late date provides information which could easily have been supplied to the Court at the hearing.

The motion to vacate is denied. Defendant AWR is granted five days within which to file its answer. Counsel for plaintiff will submit an order in conformity with this memorandum.

/s/ John I. Sirica
United States District Judge

April 29, 1958

(HEADING OMITTED) Civil Action No. 4056-54 Filed April 30, 1958

ORDER DENYING MOTION OF DEFENDANT (2)
THE ASSOCIATION OF WESTERN RAILWAYS
TO VACATE ORDER OF THE COURT ENTERED
MARCH 3, 1958

Defendant (2) The Association of Western Railways having moved

the Court to vacate its order entered March 3, 1958 denying said Defendant's Motion to dismiss the Complaint herein as to it for improper venue, Plaintiff having opposed said motion to vacate, and the Court having fully considered the aforesaid motion and opposition, and the affidavits appended thereto, and the issues raised thereby as fully set forth in its memorandum opinion dated April 29, 1958, it is, by the Court, this 30th day of April, 1958

ORDERED, That the motion of Defendant (2) The Association of Western Railways to vacate the Court's order entered March 3, 1958, be, and hereby is, denied,

AND IT IS FURTHER ORDERED, That the said Defendant is hereby granted to and including five days from the date of entry of this order within which to answer the Complaint as supplemented.

/s/ John J. Sirica

United States District Judge

Seen:

/s/ Paul F. McArdle

Attorney for (2) The Association
of Western Railways for purposes
of this order.

(HEADING OMITTED) Civil Action No. 4056-54 Filed May 5, 1958

**ANSWER OF DEFENDANT (2) THE ASSOCIATION
OF WESTERN RAILWAYS**

Defendant, The Association of Western Railways, for answer to the complaint as supplemented filed herein states:

First Defense

1. The defendant may not be sued in this District for the reason that it does not reside and is neither found nor has an agent within the District of Columbia; the defendant has not been properly served with process in this action, and the Court does not have jurisdiction over the person of this defendant.

Second Defense

2. This defendant admits that, except for the primary and exclusive jurisdiction of the Interstate Commerce Commission over this entire controversy, this Court would have jurisdiction to entertain the subject matter of plaintiff's alleged cause of action, but denies each and every other allegation, conclusion and characterization contained in Paragraph 1 of the complaint.

3. This defendant is without knowledge or information sufficient to form a belief as to the allegations of Paragraph 2 of the complaint except that it admits that Riss & Company, Inc., is a common carrier of property by motor vehicle in interstate commerce and holds certain certificates of convenience and necessity and other operating authority issued by the Interstate Commerce Commission.

4. This defendant admits the allegations contained in the first, second, sixth, seventh and eighth sentences of Paragraph 3 of the complaint. It admits (a) that general supervision and control of the affairs of the Association of American Railroads is vested in a Board of Directors; (b) that the Association has a staff of paid personnel; and (c) that a section of the Association entitled "Competitive Transportation Research" reports to the Vice-President - Assistant to the

President. It denies each and every other allegation, conclusion and characterization contained in this paragraph.

5. This defendant admits the allegations contained in the first sentence of Paragraph 4 of the complaint. It admits (a) that the members of The Association of Western Railways include common carriers by railroad in interstate commerce in states west of the Mississippi and in Wisconsin and Illinois; (b) that The Association of Western Railways has a chairman, a staff of paid personnel, and a Law Department and a Public Relations Department; and (c) that the expenses of The Association of Western Railways are paid from funds contributed by its members. It denies each and every other allegation, conclusion and characterization contained in this paragraph.

6. This defendant admits the allegations contained in the first sentence of Paragraph 5 of the complaint. It is without knowledge or information sufficient to form a belief as to the truth of any of the other allegations contained in this paragraph, and denies each and every conclusion and characterization contained therein.

7. This defendant admits the allegations contained in the first sentence of Paragraph 6 of the complaint. It is without knowledge or information sufficient to form a belief as to the truth of any of the other allegations contained in this paragraph, and denies each and every conclusion and characterization contained therein.

8. This defendant is without knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in Paragraph 7 of the complaint, and denies each and every conclusion and characterization contained therein.

9. This defendant admits that the defendants named in Paragraph 8 of the complaint are common carriers by railroad. It is without knowledge or information sufficient to form a belief as to the remaining allegations of Paragraph 8 of the complaint.

10. This defendant admits that the Association of American Railroads, The Association of Western Railways, Traffic Executive Association - Eastern Railroads, and Eastern Railroads Presidents Conference are unincorporated associations concerned with railroad matters, and that the defendants herein include the largest railroads in the United States. It denies each and every other

allegation, conclusion and characterization contained in Paragraph 10 of the complaint. (There is no Paragraph 9 in the complaint.)

11. This defendant admits the allegations contained in the first and second sentences of Paragraph 11 of the complaint. It denies each and every other allegation, conclusion and characterization contained in said Paragraph 11.

12. This defendant admits that plaintiff is a common carrier by motor vehicle of property in interstate commerce, and holds certain certificates of public convenience and necessity and other operating authority issued by the Interstate Commerce Commission. It is without knowledge or information sufficient to form a belief as to the remaining allegations of Paragraph 12 of the complaint.

13. This defendant denies each and every allegation, conclusion and characterization contained in Paragraphs 13, 14, 15, 16 and 17 of the complaint.

14. This defendant states that paragraph 18 does not charge this defendant with participation in the acts therein alleged, and defendant further states that it is without knowledge or information sufficient to form a belief as to the truth of the matters stated therein.

Third Defense

15. The complaint alleges and is based upon matters occurring prior to the limitations period provided for by Title 12, Section 201 of the District of Columbia Code (1951 Ed.), and hence the cause of action alleged therein is to that extent barred by the provisions of that statute.

Fourth Defense

16. The alleged activities of this defendant of which the plaintiff complains include (a) the solicitation of elected or appointed officials of state governments to take action against plaintiffs provided for or required by the laws of various states; (b) the solicitation of elected or appointed officials of state and local governments to enact legislation; (c) the solicitation of elected or

appointed officials of state and local governments to enforce the laws; and (d) the presentation to the Interstate Commerce Commission of facts and arguments in proceedings before the Commission. Any such activities of the defendant as thus alleged were an exercise of the rights of this defendant to assemble with others and petition the Government for a redress of grievances as guaranteed by the First and Fifth Amendments to the Constitution of the United States or were performed in a representative capacity on behalf of others exercising such rights.

17. The alleged activities of this defendant of which plaintiff complains include the preparation, circulation, and publication of statements concerning the plaintiff, the operations conducted by plaintiff, and the character and conduct of plaintiff's officers. Any such statements made as thus alleged were true in fact and were fair comment on matters of public interest, and were an exercise of the right of free speech and press guaranteed to these defendants by the First Amendment to the Constitution of the United States.

18. The alleged activities of this defendant which plaintiff seeks to enjoin include the publication of statements concerning plaintiff, the operations conducted by plaintiff, and the character and conduct of plaintiff's officers. The enjoining, restraining or prohibiting of the publication of such statements would violate the rights conferred on this defendant by the First Amendment to the Constitution of the United States.

19. The alleged activities of this defendant of which plaintiff complains include the preparation, circulation and publication of statements concerning the plaintiff, the operations conducted by plaintiff, and the character and conduct of plaintiff's officers. The Sherman Act (15 U.S.C.A. §§ 1 and 2) does not prohibit or restrict such activities of this defendant, and any construction of that Act as prohibiting or restricting such activities would render it unconstitutional as an abridgment of the guarantee of freedom of speech and of the right to assemble and petition conferred on this defendant by the First and Fifth Amendments to the Constitution of the United States.

Fifth Defense

20. Plaintiff's alleged cause of action and the damages sought in the complaint purport to be grounded upon plaintiff's own unlawful conduct, as set forth in further detail below, and upon the orders of regulatory agencies, having jurisdiction in the premises, restraining it from continuing its unlawful conduct, and by reason thereof plaintiff is not entitled to any relief herein.

21. The plaintiff for many years, beginning long prior to 1950, has operated in the interstate transportation of explosives without legal authority granted by the Interstate Commerce Commission and in violation of Section 206 of Part II of the Interstate Commerce Act (49 U.S.C.A. § 306). The illegality of many of plaintiff's operations has been determined by orders of the Interstate Commerce Commission requiring the plaintiff to cease and desist from such violations.

22. The plaintiff for many years, beginning long prior to 1950, wilfully failed to render continuous and adequate service as a common carrier by motor vehicle between the points and over the routes named in its certificates, as it was required to do by Part II of the Interstate Commerce Act, 49 U.S.C.A. § 301 et seq. Plaintiff attempted to transfer to other individuals and organizations authority to operate under the color of plaintiff's certificates in exchange for paying plaintiff a portion of the revenues derived from such operations. As a result of plaintiff's illegal conduct, the Interstate Commerce Commission, after investigation and hearing, determined that plaintiff was acting unlawfully, and ordered plaintiff to render service as required by law.

23. The plaintiff on or about December 12, 1951 entered into a transaction with Jarman Transportation Company, Incorporated, by which control or management in a common interest of plaintiff and Jarman Transportation Company, Incorporated, was effectuated or accomplished in violation of Section 5(4) of the Interstate Commerce Act as amended (49 U.S.C.A. § 5(4)); and such violation of law continued until on or about August 1, 1953.

24. As a result of the conduct of plaintiff, in July, 1953, the United States Attorney filed a criminal information in the United States District Court

for the District of Massachusetts in which plaintiff was charged in two counts for violation of the Interstate Commerce Act by unlawful control of another motor carrier and was further charged in thirteen additional counts with violation of the Act by aiding and abetting unauthorized transportation in interstate commerce. Plaintiff entered a plea of guilty in this proceeding.

25. The plaintiff for many years, beginning long prior to 1950, has frequently, consistently, and flagrantly violated the laws and regulations of the states in which it conducts interstate transportation of explosives and other freight, and continues to do so. As an example of such conduct, defendant is informed and believes, and therefore states that plaintiff committed approximately five hundred and ninety violations of the laws and regulations of the State of Ohio during the period between January 11, 1950 and June 20, 1952.

26. As a result of plaintiff's conduct and operations, as set forth above, plaintiff has on numerous occasions been prosecuted for violations of various federal, state, and local laws, regulations, and ordinances. Examples of such prosecutions, during the period from April 2, 1950, to December 19, 1950, were the convictions for thirty-three overweight violations in the State of Illinois; the finding that at least one of plaintiff's trailers was in violation of Illinois law governing the length of equipment; and 420 arrests in the State of Indiana for speeding, overweight violations, and violations of regulations of the Public Service Commission of Indiana in the years 1953 through 1955.

27. As a result of plaintiff's conduct of its operations in the State of Ohio, as set forth above, the Public Utilities Commission of that state filed a complaint with the Interstate Commerce Commission on July 11, 1952. This complaint alleged numerous violations of the laws and regulations of the State of Ohio, and prayed that the Interstate Commerce Commission revoke plaintiff's rights to operate as a motor carrier in and through the State of Ohio. This proceeding, consolidated with an investigation initiated by the Interstate Commerce Commission, resulted in a determination on September 16, 1957, by the Commission that plaintiff was not in compliance with the Interstate Commerce Act or with the rules and regulations prescribed by the Commission relative to

qualifications and maximum hours of service and safety of operation and equipment. A cease and desist order was entered. In its report, the Commission stated that the evidence in that proceeding "fairly supports the conclusion that Riss' entire pattern of operations has been one of adamant refusal to abide by our safety regulations in many material respects. That such refusal is wilful can hardly be disputed."

28. As a result of plaintiff's conduct of its operations in the State of Illinois, as set forth above, the prosecuting authorities of that state instituted proceedings entitled "People v. Riss, No. 52-42," in the Circuit Court of Salem County, Illinois, against the plaintiff based upon the habitual violation of maximum weight and load limits prescribed by the State of Illinois.

29. The plaintiff for many years, beginning long prior to 1950, has committed and continues to commit numerous violations of the Motor Carrier Safety Regulations promulgated by the Interstate Commerce Commission under the authority vested in it by Section 204 of Part II of the Interstate Commerce Act (49 U.S.C.A. § 304), such acts of the plaintiff constituting violations of Section 222 of Part II of the Interstate Commerce Act (49 U.S.C.A. § 322). As an example of such conduct, reports to the Interstate Commerce Commission by plaintiff show that in a twenty-one months period from January, 1950, to September, 1951, both inclusive, plaintiff committed four thousand, three hundred forty-nine violations of the Commission's hours-of-service regulations, and in the years 1953, 1954, 1955, and the first two months of 1956, 644 violations of the daily driving limitation, and from 118 to 666 violations per month of the cumulative limitation on hours of service. As a further example of such conduct, in seven days in November, 1951, plaintiff's tractor-trailer units carrying dangerous explosives in the states of Oklahoma, Kansas, and Missouri failed in at least thirty-five instances to come to a stop at railroad crossings, in violation of the Commission's Safety Regulation requiring such a stop.

30. The plaintiff for many years, beginning long prior to 1950 has failed to comply with the rules, regulations, and orders issued by the

Interstate Commerce Commission under the provisions of Section 220 of Part II of the Interstate Commerce Act (49 U.S.C.A. § 320), as amended. Defendant is informed and believes, and therefore states that the plaintiff has failed to file reports and failed to keep accounts, records, and memoranda as required by such rules, regulations, and orders, and that the plaintiff has filed incorrect, untrue, and incomplete reports and has failed to make full, true, and correct entries in its accounts, records, and memoranda as required by such rules, regulations and orders. Such acts of the plaintiff constitute violations of Section 222 of Part II of the Interstate Commerce Act (49 U.S.C.A. § 322).

31. The plaintiff for many years, beginning long prior to 1950, has conducted its operations with inadequate, unsafe, and improper equipment, by the following of unsafe and careless practices, and by disregarding the safety and welfare of other users of the highways, of the communities through which plaintiff's trucks are driven, and of all others. As an example of such conduct, the four thousand three hundred forty-nine violations of the Commission's hour-of-service regulations set forth in Paragraph 29 above involved repeated offenses by individual drivers, and in the month of June, 1950, more than one-fourth of the drivers employed by plaintiff committed one or more offenses.

32. By its continued violations of state and federal laws and regulations and by operating without authority granted by the Interstate Commerce Commission, plaintiff has, for many years, beginning long prior to 1950, sought to obtain, and has obtained, unfair competitive advantages over other common carriers of freight, including those which are members of the defendant association.

33. As a result of the manner set forth above in which Riss has conducted its operations, vehicles operated by Riss have been involved in numerous accidents endangering and damaging both property and people. For example, in the period 1951 through 1954, plaintiff's vehicles were involved in almost 1500 accidents, resulting in 55 deaths, 598 injuries, and property damage in excess of \$2,000,000.

34. As a result of plaintiff's conduct and operations, as set forth above, various state and local officials and citizens have discussed, debated,

or adopted statutes, ordinances, and regulations affecting the operations of the plaintiff.

Sixth Defense

35. By the Transportation Act of 1940, the Congress prescribed and enacted a national transportation policy, 54 Stat. 899, which is declaratory of the national public interest. The national transportation policy so enacted provides the standards for fair and impartial regulation of all modes of transportation subject to the provisions of the Interstate Commerce Act, including the operations of plaintiff and of this defendant. Such national transportation policy is "to promote safe, adequate, economical, and efficient service" for the shipping public, to "foster sound economic conditions in transportation and among the several carriers," to eliminate "unfair or destructive competitive practices," and "to cooperate with the several states and the duly authorized officials thereof," all for the purpose of developing and preserving a national transportation system adequate to meet the needs of the commerce of the United States and of the national defense.

36. This enactment of a national transportation policy constitutes a more recent and a more specific expression of public policy than that embodied in the Sherman Act, and provides the basic determinants for the conduct of this defendant and all other common carriers subject to the Interstate Commerce Act.

37. Common carriers by rail, including the members of the defendant association, have, beginning long prior to 1950, experienced a substantial diversion of their high-rated traffic to motor carriers, with the result that the proportion of high-rated commodities handled by the railroads has steadily decreased in relation to the low-rated commodities transported, such as coal and ore. Plaintiff and other common carriers by motor vehicle have largely limited their holding out to high-rated traffic. As a result, motor carriers, including the plaintiff, are obtaining an increasing share of the more remunerative freight traffic available. In this manner, the profit position and economic

strength of rail carriers is being weakened. If long continued, these trends will bring about a deterioration of rail service, a necessary increase of freight rates, and the undermining of the national transportation policy.

38. By reason of its illegal and inequitable conduct previously set forth in this answer, plaintiff has secured traffic which would otherwise have been shipped over the lines of the members of the defendant association, has reduced its cost of operations and increased its profits, has obtained unfair competitive advantages over the members of the defendant association, and has damaged their business and profits. Plaintiff's repeated and frequent violations of state and federal laws and regulations, plaintiff's conduct of operations without lawful authority, plaintiff's disregard of the safety of the public, and plaintiff's practices which have resulted in unfair and uneconomic competition, all as alleged previously in this answer, have been and continue to be in violation and destructive of the national transportation policy.

39. Members of the defendant association, as common carriers subject to the Interstate Commerce Act, have a duty and a right to assist in the promotion of the national transportation policy. Effective administration of that policy contemplates that common carriers themselves shall initiate proceedings and take action to enforce both federal and state laws and regulations, and to eliminate unfair, unsafe, and uneconomic practices. For example, Part II of the Interstate Commerce Act (49 U.S.C.A. § 301, et seq.) contemplates enforcement to a substantial extent through proceedings initiated by competing carriers. The Interstate Commerce Commission has had available no more than a limited personnel to obtain enforcement of that Act and the regulations issued thereunder, and action by competing carriers is essential to such enforcement.

40. The rules of procedure and the practices followed by the Interstate Commerce Commission and state regulating agencies are designed to encourage, and have the effect of necessitating, joint action by carriers in their participation in proceedings, in their presentation of evidence, and in their argument of controversial matters. Such joint action is reasonable and necessary to the effectuation of the national transportation policy.

41. Plaintiff has initiated numerous proceedings before the Interstate Commerce Commission, including a proceeding in which the plaintiff and approximately sixty other motor carriers applied for permanent authority to transport dangerous explosives over the public highways of forty-seven states. Dangerous explosives constitute a high-rated commodity. The members of the defendant association have long offered to transport, and have transported, dangerous commodities, including munitions and explosives, on their lines, and have expended large sums in equipment, facilities, and the training of personnel. Plaintiff in this proceeding sought a certificate of permanent authority to truck dangerous explosives in an area extending from Denver, Colorado, on the west, to Boston, Massachusetts, on the east. Many of the routes covered by plaintiff's application would have competed with the service offered by this defendant in the transportation of dangerous explosives. Plaintiff's application raised numerous issues of law and fact, including the public convenience or necessity of the proposed service, and the fitness and ability of the plaintiff to provide such service safely, economically, and efficiently. On September 19, 1955, the Interstate Commerce Commission found that, of the routes requested, public convenience and necessity required motor carrier service only between Chicago, Illinois, and Crane, Indiana, on the west, and Hingham, Massachusetts, and Earle, New Jersey, on the east, and at a single off-route point in Kansas. Plaintiff was granted authority to transport explosives between Crane and Earle and between Hingham and Earle for a period of five years provided it could establish its fitness. Proceedings concerning its fitness are pending. Authority to perform the other service authorized was granted to other motor carriers found to be fit, willing, and able to perform that service.

42. Part II of the Interstate Commerce Act (49 U.S.C.A. § 301 et seq.) and the rules and regulations thereunder contemplate that railroad and motor carrier competitors of applicants for authority to operate will appear, present evidence, and advance arguments which will aid the Commission in its decision upon the issues of fact and law. Rail carriers and other motor carriers have therefore participated before the Interstate Commerce Commission in the

proceeding in which plaintiff and other applicants sought permanent authority to transport dangerous explosives over the public highways of forty-seven states.

43. The application of the plaintiff and other motor carriers before the Interstate Commerce Commission, as set forth in paragraph 41 above, and any other proceeding involving plaintiff in which employees of this defendant may have participated as representatives of members of the defendant association, have in all instances involved decisions directly affecting the business, the profits, and the economic future of said members. The actions of members of the defendant association and the other rail carriers in such proceedings have been the reasonable, ordinary, and necessary result of the issues raised and the actions of the plaintiff.

44. The participation by employees of this defendant as representatives of members of the defendant association in proceedings before the Interstate Commerce Commission has at all times been in pursuance and furtherance of the national transportation policy, and was an exercise of the rights and duties conferred on said members by that policy and by Part II of the Interstate Commerce Act, 49 U.S.C.A. § 301 et seq.

45. Numerous governmental bodies and other public organizations have also intervened or participated in proceedings before the Interstate Commerce Commission involving the plaintiff in which employees of this defendant have participated. Each of these bodies and organizations intervened or participated as a result of its independent decision that such action was necessary by reason of their respective interests and plaintiff's illegal and improper conduct previously set forth in this answer.

Seventh Defense

46. The alleged actions of the defendant upon the basis of which the plaintiff seeks to recover damages in this case are matters which in whole or in part fall within the primary or exclusive jurisdiction of the Interstate Commerce Commission, and are not cognizable by this Court in a suit brought under the antitrust law.

47. The complaint contains allegations of matters of fact which require prior determination by the Interstate Commerce Commission and are not cognizable by this Court under the antitrust laws. Such matters have not yet been acted upon, determined, or decided by the Interstate Commerce Commission and are related to and essential to the full determination of all other matters of fact and conclusions of fact alleged in the complaint.

48. The complaint seeks to review the action of the Interstate Commerce Commission in the proceedings pending before the Commission entitled "Application of Riss and Company, Inc., for a Certificate of Public Convenience and Necessity to Extend its Operations as a Common Carrier," Docket No. MC-200 (Sub-No. 84) and to review the action of the Commission in other proceedings before it involving the plaintiff, or to anticipate rulings of the Commission in said proceedings, all in contravention of the provisions of Chapter 157 of the Judicial Code of the United States (28 U.S.C.A. § 2321-2325).

Eighth Defense

49. The damages which plaintiff seeks to recover are the result of actions taken by courts and quasi-judicial agencies based on reasonable cause, and of actions of legislative bodies based on the decisions of such bodies, and are not the proximate result of any action by this defendant.

Ninth Defense

50. The complaint herein fails to state a claim against this defendant upon which relief can be granted.

WHEREFORE, defendant prays that the plaintiff's complaint, as supplemented, be dismissed and that defendant recover its costs herein.

/s/ Lawrence Cake
(Other signatures omitted)

(CERTIFICATE OF SERVICE OMITTED)

(HEADING OMITTED) Civil Action No. 4056-54 Filed May 5, 1958

MOTION OF DEFENDANT (2) THE ASSOCIATION OF WESTERN
RAILWAYS, FOR SEPARATE TRIAL PURSUANT TO
RULE 42(b), FEDERAL RULES OF CIVIL
PROCEDURE

Defendant, The Association of Western Railways, moves the Court, pursuant to Rule 42(b), Federal Rules of Civil Procedure, to order a separate trial of the issues of jurisdiction and venue pleaded in the answer of said defendant as its "First Defense" prior to the trial of the remaining issues raised by the complaint as supplemented and the answer of the defendant, on the following grounds:

1. Trial of said issues would be brief.
2. If the defense is sustained, there will be no need for further trial with respect to this defendant.
3. Trial of the merits of the case will inevitably be time-consuming and expensive, and to require defendant to participate in such a proceeding without first finally resolving the issues of jurisdiction and venue could subject the defendant to irreparable loss.
4. The issues of jurisdiction and venue depend upon factual matters wholly separate and distinct from those involved in the other issues presented by the complaint as supplemented and the answer, and the joinder of such issues in the trial on the merits would (a) tend to render complex litigation more complicated, and (b) tend to submerge such issues to the prejudice of the defendant.

Respectfully submitted,

/s/ Lawrence Cake
(Other signatures omitted)

(CERTIFICATE OF SERVICE OMITTED)

(HEADING OMITTED) Civil Action No. 4056-54 Filed May 13, 1958

**AMENDMENT TO ANSWER OF EASTERN RAILROAD PRESIDENTS
CONFERENCE TO PLAINTIFF'S SUPPLE-
MENTAL COMPLAINT**

Paragraph 6 of the Answer of Eastern Railroad Presidents Conference to plaintiff's Supplemental Complaint is hereby amended to read as follows:

6. This defendant denies the allegations of Paragraph 6 of the Supplemental Complaint, except that it admits that it is an unincorporated association; that it has its only office at 143 Liberty Street, New York 9, New York; that its membership includes the President or other chief executive officer of the member railroads; that it employs a Chairman and has a staff of paid personnel; that it has an Executive Committee, other committees and subcommittees; that its expenses, including the salaries of its officers and employees are paid from assessments levied on member railroads; and that Carl Byoir and Associates, Inc. has an office and staff in the National Press Building in the District of Columbia.

/s/ Hugh B. Cox

(Other signatures omitted)

The above Amendment is hereby consented to this
day of April 9th, 1958.

/s/ A. Alvis Layne, Jr.

(HEADING OMITTED) Civil Action No. 4056-54 Filed May 26, 1958

**ORDER DENYING MOTION OF RAILROAD DEFENDANTS
TO SUSPEND FURTHER PROCEEDINGS HEREIN**

Railroad Defendants herein having moved the Court on April 7, 1958 to enter an order suspending further proceedings herein; Plaintiff having

opposed said motion; Defendants having replied to Plaintiff's opposing memorandum, and the Court having heard oral argument thereon and fully considered the aforesaid motion, opposition, reply, and argument, and the issues raised thereby, as fully set forth in its oral opinion after argument on May 23, 1958, it is, by the Court, this 26 day of May, 1958,

ORDERED, That the said motion of the railroad Defendants to suspend further proceedings herein be, and hereby is denied.

/s/ John J. Sirica
United States District Judge

Seen:

/s/ Paul F. McArdle
Attorney for all railroad Defendants herein for purposes of this order.

(HEADING OMITTED) Civil Action No. 4056-54 Filed June 9, 1958

MEMORANDUM FOR COURT

Defendant, The Association of Western Railways, respectfully excepts to the entry of the proposed order denying its motion for a separate trial of the issues of jurisdiction and venue raised by the First Defense set forth in its answer on the ground that the decision upon which such order is based was rendered in a manner not in conformity with the Rules of this Court.

Defendant further excepts to the entry of that portion of the proposed order striking from its answer the First Defense stated therein on the ground that said ruling is contrary to law and deprives defendant of any opportunity of offering proof of the facts establishing its defense that this Court has no jurisdiction with respect to it and that the venue of this action does not lie in this Court.

Defendant believes that the proposed order fairly reflects the decision rendered by the Court on May 27, 1958, and does not object to the form of the order.

Respectfully submitted,

/s/ Lawrence Cake

(Other signatures omitted)
Attorneys for Defendant The Association of
Western Railways

(HEADING OMITTED) Civil Action No. 4056-54 Filed June 9, 1958

**ORDER DENYING MOTION OF DEFENDANT (2) THE ASSOCIATION
OF WESTERN RAILWAYS FOR SEPARATE TRIAL PURSUANT
TO RULE 42(b), AND STRIKING FIRST DEFENSE OF
ANSWER OF SAID DEFENDANT**

Defendant (2) The Association of Western Railways having moved the Court for a separate trial, under Rule 42(b), FRCP, of the issues of jurisdiction and venue raised by the First Defense of its Answer filed May 5, 1958, Plaintiff having opposed said motion and suggested that said Defendant's First Defense be stricken upon the ground that the issues raised thereby had previously been finally disposed of by the Court, the Court having fully considered the aforesaid motion and opposition and the issues raised thereby, as set forth in its memorandum opinion dated May 27, 1958, it is, by the Court, this 9th day of June, 1958

ORDERED, That the motion of Defendant (2) The Association of Western Railways for a separate trial under Rule 42(b) of the issues of jurisdiction and venue raised by the First Defense of its Answer filed May 5, 1958 be, and hereby is, denied,

AND IT IS FURTHER ORDERED, That the First Defense of the Answer of said Defendant be, and hereby is, stricken from said Answer.

/s/ John J. Sirica
United States District Judge

(HEADING OMITTED) Civil Action No. 4056-54 July 9, 1958

INTERROGATORIES TO PLAINTIFF

- I. 14. Does Riss contend that any Section 22 rates for the transportation of explosives offered by it to the government have been established in conformity with procedures set forth in any of the agreements listed in I-13 above?

* * *

16. State the name and address of all employees, tariff publishing agents, or agencies who submitted quotations of Section 22 rates for the transportation of explosives to the government on behalf of Riss during the period 1948 through 1957

/s/ Stuart Ball

* * *

(HEADING OMITTED) Civil Action No. 4056-54 Filed January 9, 1959

PLAINTIFF'S ANSWERS TO AWR
INTERROGATORIES OF JULY 9, 1958

* * *

I. 14. No.

* * *

I. 16. 1. Riss & Company, Inc. employees as follows:

- A. S.A. Johnson, deceased
- B. D.C. Stone, 5000 Oak, Kansas City, Missouri
- C. M.P. Hester, probably at Casey, Iowa
- D. M.W. VanCleave, Dist. Supervisor, B.M.C. -I.C.C.
San Francisco, California
- E. J.K. Newbold, Jr., 8601 West 74th, Overland Park, Kansas
- F. H.T. Green, Riss & Co., Inc., 9th & Burlington,
North Kansas City, Missouri

2. Bureau or agency publications in which Riss was a participant:

- A. Middle Atlantic Conference
- B. Middlewest Motor Freight Bureau, Agent
- C. Rocky Mountain Motor Tariff Bureau, Inc.
- D. Southwestern Motor Freight Bureau, Inc.
J. D. Hughett, Agent

Addresses and names of individuals as in I. 13.

* * *

OPINION OF JUDGE SIRICA ON JANUARY 16, 1959

Opinion

On August 8, 1958, the United States Court of Appeals for the District of Columbia remanded this case to the District Court with directions to vacate its order of May 26, 1958, and to reconsider petitioners' motion to suspend proceedings in the light of said order.

In the early part of 1958, petitioners moved to suspend all proceedings in this antitrust litigation except discovery not connected with this motion, and urged the Court to refer to the Interstate Commerce Commission one of the issues set forth in the complaint regarding rate-making, pursuant to agreements on procedure filed with the Commission, so that the Court might obtain a ruling on whether these joint rate reductions were immunized from the operation of the antitrust laws. Extensive briefs were filed and the Court heard oral arguments. After delivering an oral opinion from the bench, the Court denied the motion in an order entered May 26, 1958. Relying strongly on a recent Supreme Court decision not mentioned by the Court in its oral opinion, most of the railroad defendants then petitioned for a writ of certiorari from the Court of Appeals and asked that court to reverse this Court's order and to direct this Court to suspend proceedings and refer the above issue to the Commission. The Court of Appeals granted the writ, but declined to rule on the merits. Instead, it remanded the case to this Court with directions to vacate the order of May 26, and to reconsider petitioners' motion in the light of its order and of the Supreme Court's recent holding in Federal Maritime Board v. Isbrandtsen Co., et al, 356 U.S. 481 (1958).

Petitioners then requested the Court of Appeals to clarify certain language in its order of August 8, 1958. The court granted this request in an order dated December 16, 1958.

Before discussing the legal issues raised by this motion, it is

necessary to summarize the background of this complex case so that all issues may be viewed in their proper context.

In 1954, Riss & Company, Inc., a common carrier by motor vehicle in interstate commerce, filed this civil anti-trust suit, seeking an injunction and \$90,000,000 in treble damages. It alleged that beginning in or about 1950, defendants, most of whom are railroad companies, had agreed and conspired in unreasonable restraint of trade and commerce to injure or destroy plaintiff's business and to acquire a monopoly of land transportation of property in the United States, and had thus violated Sections 1 and 2 of the Sherman Act (15 U.S.C. secs. 1, 2).

Plaintiff alleges it has been a common carrier of property by motor vehicle since 1927 and operates as authorized by the Interstate Commerce Commission throughout twenty-two states plus the District of Columbia. It uses over 800 truck units and employs over two thousand persons. Riss also has alleged that during the years from 1950 to 1953, inclusive, it was one of the five largest interstate motor carriers in the United States in terms of gross revenues and is, and has been for several years, one of the largest motor carriers of military supplies, including ammunition and explosives, for the Armed Forces. About fifty-eight first class railroad companies, several joint railroad organizations and trade associations and one public relations firm are defendants in this action.

In order to effectuate the object of the alleged conspiracy, plaintiff charges that defendants employed various means, some of which are cited as examples in the complaint. Defendants are accused of having carried on a program of soliciting, directly as well as indirectly through "front" organizations, the elected and appointed officials of various states to take steps leading to the revocation and cancellation of the interstate operating authority held by plaintiff. In 1952, it is alleged that some of the defendants employed a public relations expert to persuade the Public Utilities Commission of Ohio to file proceedings before the Interstate Commerce Commission looking toward the cancellation of plaintiff's operating authority.

By similar methods of solicitation, according to the complaint, officials of states, cities and towns through which plaintiff operates, were urged by defendants to enact statutes, ordinances and regulations designed to unduly hamper the operations of the plaintiff and to render them economically unfeasible, such as by imposing unreasonably low weight limits on truck shipments or by banning the use by plaintiff's vehicles of certain important highway routes. Defendants are also alleged to have urged, directly and indirectly through "front" organizations, that state officials carry out a campaign of unusually strict enforcement of statutes, ordinances and regulations particularly aimed at plaintiff's vehicles such as by urging the Public Utilities Commission of Ohio to assign special investigators to follow plaintiff's trucks for hundreds of miles in order to discover possible violations.

Defendants also are alleged to have abused their privilege of intervention in proceedings before the Interstate Commerce Commission. According to plaintiff, defendants joined together to carry on an extensive and vicious campaign of anti-truck propaganda in order to persuade citizens' groups, automobile clubs and other neutral organizations to register their complaints against Riss in the course of proceedings started by Riss before the I. C. C. to obtain new operating authorizations. Other unfair competitive practices, such as circulating and publishing false and malicious statements about Riss and its officers are also charged in the complaint.

According to the complaint, defendants used railroad groups in their public relations campaign as well as "front" organizations whose connection with the railroads would not be known to the public. It is also asserted that defendants tried to infiltrate and make use of several independent public organizations such as the Illinois Parent-Teachers Association and the Congress of Parents and Teachers of Oklahoma in order to achieve their unlawful objectives. Chief reliance, however, is alleged to have been placed on such instrumentalities as "Competitive Transportation Research", "Motor Carrier Bureau" and "Committee on Motor Transportation" set up by defendants, as well as upon other temporary committees and organizations. Plaintiff claims

that defendants spent large sums of money, estimated at about \$1,000,000 in carrying out their unlawful activities.

In January, 1958, with the permission of the Court, plaintiff filed a supplement to its complaint which is embodied in paragraph 18. Plaintiff claims therein that, pursuant to the unlawful plan described above, defendant railroads submitted to traffic officials of the Department of Defense in 1955 a forty-per cent reduction in rate on the carriage of explosives totaling more than 50,000 pounds by railroads competing with Riss for the same kind of traffic. It is plaintiff's claim that this reduction was intended to accomplish one of the principal objects of the conspiracy; i. e., to exclude plaintiff from the explosives traffic and it has allegedly had that effect with respect to the principal points served by the plaintiff.

Plaintiff further alleges that defendants' conduct has caused serious damage to its business and to its reputation and has forced plaintiff to spend large sums to counteract the effects of defendants' conduct. By way of relief, plaintiff demands the following:

"1. Injunctive relief permanently enjoining and restraining AAR, Western Railways, Presidents Conference and Eastern Railroads, and each of them, from creating or continuing any committees, subcommittees, bureaus, departments, sections, divisions, subdivisions, or other association activity the principal purpose of which is to restrain, impede, impair, hamper, harass or eliminate the competition of plaintiff and of other motor carriers;

"2. Injunctive relief permanently enjoining, restraining and prohibiting defendants and each of them and their officers, directors, agents, servants and employees from agreeing, conspiring or combining to restrain the competition of plaintiff and from conspiring, combining and attempting to monopolize land transportation by the elimination of plaintiff and from performing any acts in furtherance of such unlawful objects and purpose;

"3. Judgment against defendants and each of them for \$90,000,000, being the amount equal to three times the damages sustained by plaintiff;

"4. Judgment against defendants and each of them for the amount of reasonable attorneys' fees and costs of this action;

"5. Such other and further relief as to the Court may appear just and proper; and

"6. Injunctive relief enjoining the defendant railroads from accepting traffic pursuant to the illegal quotation described in paragraph 18 hereof."

I

This is a summary of plaintiff's allegations. In their motion to suspend and to refer the rate reduction issue to the I.C.C., defendants seek to invoke the doctrine of "primary administrative jurisdiction". The defendants contend that a new issue was raised which involves the primary, if not the exclusive, jurisdiction of the Interstate Commerce Commission when plaintiff was allowed by the Court to supplement its complaint and to include in paragraph 18 the allegation that the uniform and concerted rate reduction, which took effect on or about November 20, 1955, was intended to exclude the plaintiff from the business of carrying such shipments of explosives; that said quotation was made for the purpose of effectuating one of the principal objects of the conspiracy, that is the elimination of the plaintiff as a competitor with the railroads for explosives traffic. As a defense to this allegation, it is also argued that the new rates are reasonable and compensatory when all the cost factors are taken into consideration and that, furthermore, the rate quotation was set up according to procedural agreements approved by the Commission and thus is immunized from the operation of the antitrust laws by virtue of 49 U.S.C. § 5b(9). It is defendants' position that this matter is extremely technical and complex and thus the Court should obtain the expert opinion of the Commission with respect to defendants' contentions before the case goes to trial.

Plaintiff argues, on the other hand, that it is immaterial whether defendants' act of reducing rates, considered by itself, is covered by prior procedural agreements approved by the Commission or is immunized from the antitrust laws because it is a well-settled principle of law that a lawful act may be properly alleged as a means of effectuating one of the principal objects of the alleged conspiracy; that is, the elimination of plaintiff as a competitor with the railroads for explosives traffic.

These, then, are the basic legal issues before the Court. Certain practical considerations also enter into the case. This private antitrust suit against almost sixty defendants has been on the docket over four years. During that time, five different judges have made rulings on various preliminary motions. In the interest of finally resolving the complex and serious issues raised by this case and of doing so in the spirit of Rule 1 of F.R.C.P., this Court has set October, 1959, as a tentative time for trial. A great deal of work by both Court and counsel will yet have to be done in order to meet such a schedule, and this date may be delayed because of the recent proceedings in our Court of Appeals. Both sides have requested trial by jury, and have estimated that the trial will last from four to six months. The Court's basic problem is this: Should this important antitrust suit, already more than four years old, and involving issues of serious importance to the national transportation industry, be further delayed for one or perhaps several years in order that the Court might request the expert opinion of the Interstate Commerce Commission as to whether one of many overt acts alleged to have been committed pursuant to a Sherman Act conspiracy ought to be immunized from the operation of the antitrust laws?

The rate reduction issue is raised in paragraph 18 of the Complaint as Supplemented, which reads as follows:

"18. On or about Oct. 20, 1955, the railroad defendants herein caused to be submitted to traffic officials employed by the Department of Defense a uniform, unpublished rate quotation, by and on behalf of the railroads engaged in carrying explosives

traffic in competition with the plaintiff. Said quotation established railroad rates for carrying explosive shipments totalling more than 50,000 pounds which were nearly forty percent below the general level of such rates prevailing for the previous eight years. Said uniform and concerted rate reduction, which took effect on or about November 20, 1955, was intended to exclude the plaintiff from the business of carrying such shipments of explosives and has had that effect with respect to the principal points served by the plaintiff. Said quotation was made for the purpose of effectuating one of the principal objects of the conspiracy charged herein, to wit, the elimination of the plaintiff as a competitor with the railroads for explosives traffic and has substantially injured the plaintiff's business. The Interstate Commerce Commission has no jurisdiction over said quotation and plaintiff will continue to suffer substantial and irreparable injury from said illegal quotation until and unless the acceptance of traffic pursuant thereto is enjoined by this Court."

In its earlier ruling on this motion, this Court was strongly influenced by the decision in Atchison, Topeka and Santa Fe Railway Co., et al., v. Aircoach Transportation Association, Inc., et al., 102 U.S. App. D.C. 355, 253 F.2d 877 (1958), hereinafter referred to as ACTA. On motion by both sides for summary judgment, the District Court there had ruled that the concerted quotation by railroads under Section 22 of the I.C.C. Act of certain variable rates and package bids for military passenger traffic were per se illegal under the antitrust laws, and that 49 U.S.C. sec. 5b(9) did not grant immunity from these laws.

In reversing, the Court of Appeals held that it could not be said as a matter of law that all joint rate reductions under section 22 must be excluded from the class of concerted actions covered by prior procedural agreements approved by the Commission under 49 U.S.C. sec. 5b(9) and, therefore, it was error to hold that all such reductions in rate must be denied immunity from the antitrust laws under 49 U.S.C. sec. 5b(9). Hence, some

section 22 rates arrived at by joint action might be within the coverage of prior approved arrangements for rate making and hence might be immunized from the antitrust laws. The Court of Appeals felt that the Commission's prior rulings as to the possible or actual coverage of defendants' conduct by procedural agreements or as to the Commission's power to decide these very questions were not clear and decisive. The Court observed at p. 885:

"Nevertheless, the questions are appropriate for Commission consideration, even though, as we believe, exclusive primary jurisdiction over either of them does not reside in the Commission by reason of section 5a(7) [49 U.S.C. 5b(7)]."

The Court of Appeals then ruled that the District Court should, in its discretion, withhold decision on the interpretation of the I. C. C. Act and the approved procedural agreements until the Commission has had a chance to decide initially whether, in its opinion, the railroad rate reductions can be relieved from the antitrust laws because of coverage by approved agreements.

After discussing the relationship of defendants' practices to unlawful price-fixing, the Court of Appeals then set a limitation on the power of the Commission to resolve the antitrust aspect of the rate practices. It said at page 365:

"One further substantive legal question must be considered. Even though it should be found in the end that the practices as such have been validly immunized by section 5a approved agreements, nevertheless, if they are part of an effort by Railroads in combination or conspiracy to eliminate the competition of Aircoach, rather than used merely to meet that competition, the practices would be removed from the protection of section 5a(9). We do not think the Act or any agreement which has been approved under it can be construed as authorizing the use of such practices for the purpose of eliminating the competition of Aircoach for the section 22 transportation involved. See, by analogy, *American Tobacco Co. v. United States*, 328 U.S. 781, 809, 66 S. Ct. 1125, 90 L. Ed. 1575; *State of Georgia v. Pennsylvania R.*, *supra*, 324

U.S. at page 458, 65 S. Ct. at page 726; *Kobe, Inc. v. Dempsey Pump Co.*, 10 Cir. 198 F.2d 416, 422; *Noerr Motor Freight, Inc. v. Eastern R. R. Pres. Conf.*, D.C. E.D. Pa., 155 Supp. 768, 814-816, 822-825; *Parmelee Transp. Co. v. Keeshin*, D.C. N.D. Ill., 144 F. Supp. 480, 484; *Noerr Motor Freight, Inc. v. Eastern R. R. Pres. Conf.*, D.C.E.D. Pa., 113 F. Supp. 737, 742-744; *Slick Airways, Inc. v. American Airlines, Inc.*, D.C.D.N.J., 107 F. Supp. 199, 214, appeal dismissed sub nom. American Airlines, Inc. v. Forman, 3 Cir. 204 F.2d 230, certiorari denied 346 U.S. 806, 74 S. Ct. 54, 98 L.Ed. 336; *United States v. Association of American Railroads*, D.C.D. Neb., 4 F.R.D. 510, 526

The motion of Railroads is not to be construed as admitting factual allegations in regard to a purpose to destroy competition which would have the legal result of removing Railroads from any possible protection from the antitrust laws; nor can Aircoach's motion be construed as abandoning those allegations. Thus, on this aspect of the case, there remains a factual dispute. Moreover, this aspect of the case need not be submitted for consideration or initial decision by the Commission as to either questions of fact or of law.

"There thus arises a matter of procedure. As to this, a discretion must be left to the District Court after hearing the parties. It might be considered preferable, if Aircoach desires to pursue the assertions regarding a purpose to destroy competition, that this branch of the case should be the subject of a hearing, limited to that problem. Should Aircoach prevail Railroads would be liable in damages, and an appropriate injunction also could be granted. Or proceedings in the District Court on this subject could await reference to the Commission of the question of coverage by statute or approved agreement." (Emphasis supplied.)

The case of American Tobacco Company v. United States, 328 U.S. 781, 809, decided in 1946 and cited above was a criminal action brought under

the Sherman Act and the defendants, who were officers of large tobacco companies, were convicted on four counts of an indictment charging conspiracy in restraint of trade, monopolization, attempting to monopolize, and conspiracy to monopolize. In the petition for certiorari the question was limited to "whether actual exclusion of competitors is necessary to the crime of monopolization under Section 2 of the Sherman Act."

At page 809 the Court said:

"It is not the form of the combination or the particular means used but the result to be achieved that the Statute condemns. It is not of importance whether the means used to accomplish the unlawful objective are in themselves lawful or unlawful. Acts done to give effect to the conspiracy may be in themselves wholly innocent acts. Yet, if they are part of the sum of the acts which are relied upon to effectuate the conspiracy which the statute forbids, they come within its prohibition. . ."

The case of State of Georgia v. Pennsylvania Railroad Company, 324 U.S. 439, decided in 1945, was a suit by a state charging that the defendant railroads had set up rates that discriminated against the ports and cities of Georgia and greatly hampered the industrial and economic development of the entire state, in violation of the antitrust laws.

One of the defendants' contentions was that the L. C. C. had jurisdiction over these rate matters and had actually approved these rates under L. C. C. Act standards. The court held that carriers are also subject to the antitrust laws. Even though the rates had to be cleared through the L. C. C., it may be that circumstances make these rate agreements restrictive rather than competitive. The court said that a conspiracy to fix rates might be illegal though the rates fixed were reasonable and nondiscriminatory, and, as Mr. Justice Brandeis had said in the Keogh case (260 U.S. 156), the fact that rates had been approved by the L. C. C. would not, it seems, bar proceedings by the Government.

The court then stated:

"It is sufficient here to note that we find no warrant in the Interstate Commerce Act and the Sherman Act for saying that the authority to fix joint through rates clothes with legality a conspiracy to discriminate against a State or a region, to use coercion in the fixing of rates, or to put in the hands of a combination of carriers a veto power over rates proposed by a single carrier." (Emphasis supplied.)

It is clear from the above language in the ACTA case that a court need not refer to the Commission the issue of whether a rate quotation was made as part of a combination or conspiracy to eliminate a competitor. This follows logically because such a joint act if combined with the unlawful intent of eliminating a competitor would fall outside of the immunity granted by 49 U.S.C. 5b(9) regardless of a possible I.C.C. ruling that the methods of arriving at the new rate conformed to prior procedural agreements filed with and sanctioned by the Commission. The Court of Appeals also authorized a separate hearing on the allegations of intent to destroy competition which might, if the defendants in ACTA lost, result in a determination of liability and an award of damages and injunctive relief. Thus, a clear distinction was drawn between the antitrust aspects and the technical rate-making issues in the ACTA case. In ACTA, both aspects grew out of the same type of activity, namely, section 22 rate quotations. The lawfulness of these quotations formed, for all practical purposes, the sole issues of that case. Since the Court of Appeals authorized the District Court, in ACTA, in its discretion, to itself decide the fundamental questions of antitrust liability and damages, it seems to be far more important to follow that reasoning in this case where the technical aspects of section 22 rate-making constitutes only one part of the issue raised by paragraph 18 of the complaint as supplemented and where this rate reduction itself forms only one out of the many overt acts alleged by the plaintiff.

However, in the view of the Court of Appeals, the decision of the Supreme Court in Federal Maritime Board v. Isbrandtsen Co., et al, 356 U.S. 481 (1958), has modified the holding in ACTA by placing on District

courts a duty under clearly defined conditions to refer certain issues to administrative agencies. The Court of Appeals in its order dated August 8, 1958 stated as follows:

" . . . it is the view of this court that the Isbrandtsen opinion modified the holding of the Aircoach case by requiring that the issue of the intent and effect of an agreement approved by the Commission must, in a case where such issue is the sole or dominant issue in the case, first be referred to the Commission prior to a court determination of whether such agreement violates the anti-trust laws, . . . " (Emphasis supplied.)

Answering defendants' motion for clarification of the above language, the Court of Appeals in an order dated December 16, 1958 stated as follows:

" . . . The intent, however, of the order of August 8 was to assert our view that the Isbrandtsen opinion modifies the holding of the Aircoach case by requiring that the issue of the intent and effect of a rate reduction claimed to have been taken pursuant to procedures set forth in agreements approved by the Commission under Sec. 5a of the Interstate Commerce Act, must in a case where such issue is the sole or dominant issue, first be referred to the Commission prior to a court determination of whether such rate reduction violates the anti-trust laws. The 'issue' referred to in the order was not intended to mean the issue of the applicability of sec. 5a agreements to the rate reductions. "

The Court, in its order of August 8, interpreted Isbrandtsen as applying to a factual situation more in line with the case at bar, and used the following language:

" . . . it is the view of this court that the Isbrandtsen decision does not necessarily require referral to the Commission of issues such as those sought to be referred to the Commission by petitioners' motion where the agreement is only one of a considerable number of overt acts alleged and where the policy favoring referral is

clearly outweighed by other factors such as the probability of undue delay and the overriding importance of early consideration of the other overt acts alleged" (Emphasis supplied.)

Before considering the precise way in which Isbrandtsen modified ACTA with respect to this case, it may be noted that this Court, at the request of defendants, had considered Isbrandtsen before it denied the original motion to suspend.

The sequence of events leading up to this Supreme Court decision is of importance in determining its scope. In 1952, an association or "conference" of steamship lines engaged in foreign trade adopted a dual system of international freight rates. Under this system, a shipper would pay less than regular rates for the same service if he signed an agreement to patronize the conference exclusively. The ostensible purpose of the dual-rate arrangement was to meet the competition of an independent carrier, Isbrandtsen Co., Inc. The proposed system was submitted to the Federal Maritime Board for approval pursuant to law, and orders of approval were issued in December, 1955 and January, 1956. Isbrandtsen Company, Inc. petitioned our Court of Appeals to review these orders. That Court set aside the Board's order on the ground that the system of dual rates was illegal per se under sec. 14 of the Shipping Act of 1916. /99 U.S. App. D.C. 312, 239 F.2d 933 (1956)/

The Supreme Court granted certiorari to resolve the issue as to the legality of the dual-rate system and stated in its opinion at page 487:

" . . . The question for our decision is whether the Court of Appeals correctly set aside the Board's orders."

The Supreme Court agreed with the Court of Appeals and held that the dual-rate system was illegal.

Examination of the opinion shows that the case was not decided by application of the doctrine of "primary administrative jurisdiction". Under this doctrine, the courts often decline to determine a controversy, first presented to it, where it involves a question which is within the jurisdiction of an administrative agency, prior to the decision of that question by the

administrative tribunal, and where the question demands the exercise of administrative interpretation requiring the special knowledge, experience and services of the agency to decide technical and intricate matters of fact.

The court in Isbrandtsen discussed this practical policy of judicial administration in the course of explaining the rulings in two of its earlier decisions which had been relied upon by Far East Conference. On page 496 of its opinion, it said:

"Petitioners argue that our construction of sec. 14 Third is foreclosed by this Court's decisions in *United States Nav. Co. v. Cunard S.S. Co.* 284 U.S. 474, (76 L. ed. 408, 52 S. Ct. 247); and *Far East Conference v. United States*, 342 U.S. 570, (96 L. ed. 576, 72 S. Ct. 492). A reading of those opinions immediately refutes any suggestions either that this issue was expressly decided in those cases or that our holding here is not fully consistent with the disposition of those cases."

The Court then summarized petitioners' contentions as follows:

"The Board and the Conference argue that, if the Court in these earlier cases had thought that sec. 14 Third in any way makes dual rates per se illegal and thus not within the power of the Board to authorize, it would not have found it necessary to require that the Board first pass upon the claims."

In rejecting this reasoning, the Court said at page 498:

"It is, therefore, very clear that these cases while holding that the Board had primary jurisdiction to hear the case in the first instance, did not signify that the statute left the Board free to approve or disapprove the agreements under attack. Rather, those cases recognized that in certain kinds of litigation practical considerations dictate a division of functions between court and agency under which the latter makes a preliminary, comprehensive investigation of all the facts, analyzes them, and applies to them the statutory scheme as it is construed."

Thus, it is clear that the problem of whether or not a district court should refer certain issues to an administrative agency was not squarely before the court in the Isbrandtsen case.

The question next arises: In what precise way does Isbrandtsen modify ACTA? ACTA contained two basic holdings. The first related to the proper forum for decision of issues as to the procedural agreements and their connection with Section 22 rate practices. The second dealt with the exceptional circumstances under which Sec. 5a immunity would not apply. On the first issue, the Court of Appeals held in the ACTA case that the L. C. C. and the District Court had concurrent jurisdiction to decide the intent and effect of approved procedural agreements in relation to Section 22 rates, and whether coverage by these agreements would immunize these rates from the antitrust laws. On page 364 of that opinion the court stated as follows:

"In short, the court, while retaining jurisdiction, should in its discretion withhold decision on the interpretation of the statute and existing agreements approved under section 5a, insofar as the challenged practices are concerned, until the Commission has had an opportunity to decide initially whether in its view the Railroads can, with respect to these practices, be relieved of the operations of the antitrust laws under the statute and, if so, whether they have been so relieved by any approved agreement, and, if so, by which agreement or agreements, by what provisions thereof, and as of what date. The Commission might disclaim jurisdiction, or for some other reason might refrain from deciding these questions. We do not hold that it is required to decide them. The court could then proceed according to its own light to interpret either the statute or the agreements." (Emphasis supplied.)

On the second question, it was held in ACTA that, under no circumstances could antitrust immunity under 49 USC 5b(9) be held to apply to the use of approved procedures to set Section 22 rates as if they were part of an effort by railroads in combination or conspiracy to eliminate the competition of Air-coach.

It is clear from the language in its order that the Court of Appeals interpreted Isbrandtsen as modifying the first holding in ACTA only by limiting the District Court's discretion to refer issues.

It is the governing rule now that the issue of the intent and effect of a rate reduction, claimed to have been taken pursuant to procedures set forth in agreements approved by the Commission under Section 5a of the Interstate Commerce Act, must, in a case where such issue is the sole or dominant issue, first be referred to the Commission prior to a Court determination of whether such rate reduction violates the antitrust laws.

Thus, it would appear that the second holding of ACTA stands unaffected by Isbrandtsen.

If plaintiff, during the trial, cannot prove an affirmative answer to this question, then it concedes it cannot recover based on the rate reduction issue. On the other hand, if it should develop at the trial that the plaintiff can prove that the rate reduction as set forth in paragraph 18 was one of several overt acts alleged, and prove that this rate reduction was made for the purpose of effectuating one of the principal objects of the conspiracy charged therein; that is, the elimination of the plaintiff as a competitor with the railroads for explosives traffic, then under ACTA no amount of coverage by approved agreements and no degree of immunity under 49 U.S.C. 5b(9) could remove the rate reduction from the prohibitions of the Sherman Act.

In reaching either of these alternatives, no determination by the Commission seems necessary on the above contentions made by the plaintiff. Even if the Commission were to decide that the rate reduction, considered by itself, conformed to the standards of the Interstate Commerce Act, it is nevertheless well settled that a lawful act may be validly alleged as forming a part of a conspiracy for an unlawful purpose such as to restrain trade. Noerr Motor Freight v. Eastern Railroad Pres. Conf., 155 F. Supp. 768 (E. D. Pa. 1957).

The basic reason behind defendants' motion to suspend is the expectation of obtaining an I. C. C. ruling that the Section 22 rate reduction is "im-

munized" from the operation of the antitrust laws by 49 U.S.C. 5b(9). This Court cannot say how the Commission would be likely to rule if this issue alone were submitted to it. After a substantial delay in the final disposition of this issue, it is possible that defendants might obtain an adverse ruling. Then all the harmful effects that a long delay brings to protracted litigation would have been endured to no purpose.

The result would not be different if the defendants won all of their arguments before the Commission. In effect, the Commission would be ruling that the Section 22 rate reduction on explosives, standing alone, were covered by approved agreements on rate procedures and that therefore they are removed from the operation of the antitrust laws by 49 U.S.C. 5b(9). Thus, no anti-trust suit could be brought based on the act of reducing rates alone. This would simply mean that a private party could not validly file a complaint alleging that defendants violated the antitrust laws solely because they concertedly lowered the rates on explosives traffic for the United States Government. Without such an immunity provision, railroads would often be suspected of combining to fix prices when they make even routine changes in their rates in cooperation with each other. The railroads are right in their contention that cooperative or joint rate-making is often essential, especially when the goods in question are normally handled by many companies on a vast, interlocking rail system. As the court in ACTA observed at 102 U.S. App. D.C. 355, 361, 253 F.2d 877, 883 (1958):

" . . . Furthermore, upon the basis of extensive testimony in committee hearings on section 5a, bearing on its possible application to section 22 'rate adjustment' or reduced rates for war materials, the House and Senate Committee Reports pointed out that the evidence was convincing that the joint organizations maintained by the carriers were not only necessary to enable them to meet the commercial requirements of the nation but also were indispensable to the requirements of national defense. "

Thus, it would seem that the antitrust immunity that defendants invoke was designed to protect ordinary rate-making in the course of regular business

so as to adjust to changing costs and to meet the challenges of outside competition. Could the protection of 49 U.S.C. 5b(9), assumed above, extend to the use of the power to set rates in concert as part of a plan or conspiracy to eliminate competition? According to the holding in ACTA quoted above it could not. Even if a given joint act of reducing rates were to be considered as lawful standing by itself, it may still be properly alleged as one of the means used to effectuate a conspiracy to accomplish an unlawful object. This is clear from the cases cited in the ACTA opinion.

Thus, the rate issue is an integral part of the alleged conspiracy, and cannot be evaluated apart from the other allegations in the complaint. There are two possibilities that would result from referral to the I. C. C. If the I. C. C. heard argument or conducted a hearing solely upon the immunization issue raised by defendants, then its ultimate ruling would, under the plaintiff's allegations, certainly be indecisive. On the other hand, the parties might be permitted to present all of the issues raised by the pleadings so that the Commission could get the entire picture. This would be a laborious way to resolve only one issue in this complex case. Several months would probably be required to present all of this evidence. Furthermore, at the end of this process plaintiff, if it prevailed, would still be unable to obtain the substantive relief it seeks here. An entire retrial of the case would then be necessary in the District Court.

The Court must conclude, therefore, that a reference of the rate-reduction issue to the I. C. C. would be a waste of time and effort and would entail unnecessary expense on the part of all parties to this litigation.

Furthermore, it is also clear that the intent and effect of the Section 22 rate-reduction is in no sense the dominant, much less the sole, issue of this litigation. The complaint as supplemented alleges a complex conspiracy in violation of the Sherman Act. A concerted reduction in explosives rates is alleged to have been one of the many overt acts designed to effectuate the unlawful plan. When the plaintiff filed the original complaint the rate issue was not included and the other allegations were relied upon to constitute a cause of action.

Defendants, in their supplemental memorandum filed September 29, 1958, try to de-emphasize the non-rate allegations of the complaint. On page 8 it is said:

" . . . There may be some evidence relating to the alleged campaign of defamation. But this will be only to lend color to plaintiff's claim that there is a continuing conspiracy among the defendants.

* * * * *

"Obviously, plaintiff can say that the complaint raises issues as to defamation. But the assertion of issues does not make them substantial."

However, in the course of oral argument on this motion on May 23, 1958, this Court asked Mr. Ball, counsel for some of the defendants, whether he would be willing to stipulate that the non-rate or other charges contained in plaintiff's complaint are true if the rate-reduction issue by itself were sent to the I. C. C. (Tr. pp. 95, 96, 97) The exact colloquy is as follows on page 95 of the Transcript of Proceedings before the Court on May 23, 1958:

"The Court: Let me ask you this. I don't suppose you would consent to this. I wouldn't either if I were you. Would you be willing to go over to the Commission and say to the Commission, in effect, this: that we admit for the purpose of this case, if it is sent over there, that we are guilty of every single thing that the plaintiff says we guilty of in this complaint; but regardless of that, the Act which you have been speaking about, which enacted 5a, I think, of the Interstate Commerce Commission Act, immunizes us from the antitrust laws, so it makes not a particle of difference whether or not we were guilty of any conspiracy?

Mr. Ball: I cannot say that because the complaint _____

The Court: Would you do that?"

"Mr. Ball: I would not, because the complaint alleges things that go beyond the rate-making actions themselves.

The Court: I understand. I didn't expect you to do it, frankly. I mean that I am saying that it seems to me that a hearing would

have to be conducted over there, pursuant to the ACTA case, to determine whether or not the defendants were guilty of the very things that the plaintiff says they were guilty of. I don't know whether they are or not, and I am not going to know until the evidence is in this case.

Mr. Ball: Now, let me clarify one point. The Commission is not going to decide whether we went before or did the public relations job.

The Court: Of course, they are not going to decide that.

Mr. Ball: Those are the allegations that are not rate-making allegations.

The Court: I understand that.

Mr. Ball: But the Commission is the one that has got to decide.

The Court: They are going to decide whether or not this agreement, the way it was prepared and agreed to, they are going to decide whether or not that agreement itself was a valid agreement, correct?

Mr. Ball: And first and second whether the activities under it were in accordance with it and, third whether the rate made under it, was it made in accordance with it, or whether there was a predatory practice or some violation of transportation policy.

The Court: I understand, and they will limit their investigation and hearing on that point.

Mr. Ball: Now, with that _____

The Court: These points."

Counsel declined to so stipulate and thus impliedly recognized the importance of those allegations if they could be established as true.

On the factual importance of these non-rate allegations, little can be said at this stage of the case. The parties are in the midst of discovery and the over-all picture is far from complete. It is impossible now to tell what evidence the plaintiff will present at the trial. Isolated statements of plain-

tiff's officers in answer to interrogatories and by way of depositions cannot be the basis for judging the weight or importance of evidence as it may develop at trial, months from now.

Furthermore, these allegations of defamation as well as other charges are not unique to this case. In Noerr Motor Freight, cited above, several of the allegations appear to resemble some of those in this litigation. It, too, was a private antitrust suit for treble damages and injunctive relief brought by trucking firms against railroads, rail associations and a public relations firm. At the outset, Judge Clary, the trial judge, felt that the charges seemed somewhat incredible. Cf. 155 F. Supp. 808. After presiding over a four month trial, the judge made the following finding, on page 816:

"The proofs in this case have definitely established joint action on the part of all of the defendants to destroy the good will and injure the business of the plaintiffs. They have proved the formation of so-called 'independent citizen groups' which were mere pawns in circulating information derogatory to the plaintiffs; dissemination of false information to customers of the plaintiffs for the same purpose, the organization of groups to protest the use of the highways by plaintiffs' "Big Trucks", and the duping and using of public officials and officials of independent organizations to accomplish the same purpose of driving the plaintiffs out of competition with the defendants. The actions of the defendants do not fall within legal bounds of either proper means or proper objectives and consequently such activities must be condemned."

After a separate hearing on the issue of relief and damages, the Court enjoined defendants from continuing the conspiracy charged and awarded \$652,000 damages plus \$200,000 counsel fees. Cf. 166 F. Supp. 163. The judgment is now on appeal.

Defendants also contend that plaintiff's request for injunctive relief to prevent further acts unrelated to the rate cut is not to be taken seriously, because plaintiff has made no effort to seek a preliminary injunction. This

failure, it is argued, shows that plaintiff does not really think it can show substantial injury resulting from the alleged defamation campaign. But more reasonable inferences may also be made. The size and scope of the conspiracy alleged would make necessary a lengthy and costly hearing. Preparation for this would involve the same kind of detailed discovery that is now going on in preparation for the trial itself. The procedure of waiting until the case has been presented on its merits was followed in the Noerr case and, furthermore, a separate hearing on the question of relief and damages was there held some time after the trial. Thus, no inference adverse to plaintiff can be made based on its failure to seek an injunction before the trial on the merits.

From the above discussion, it is clear that the purely legal standards for referral of the rate reduction issue to the Commission have not been met. It is not the sole or dominant issue of the case and no possible ruling as to its coverage by prior approved procedural agreements would be conclusive where such rate reduction is alleged to be part of a conspiracy to restrain trade. At this point, certain practical aspects of the referral problem must be considered.

In the first place, undue delay with accompanying hardship and expense to the parties would almost certainly result if this issue were referred to the Commission. The rate question, while not the sole or dominant issue of the case, is, nevertheless, an essential segment of plaintiff's cause of action and equally as important as the other allegations. The trial on the merits could not proceed properly with this aspect of the case missing. Referral would delay the entire litigation. This Court has no power to compel the Commission to make any ruling at all, much less to bring about a prompt decision. A determination would have to await its turn on the Commission's crowded docket. It might be that many months would pass without Commission action. The Court would then probably have to wait a reasonable time before itself taking action, and this might amount to one or more years. What "a reasonable time" might be can perhaps be gauged by examining the duration of past Commission proceedings involving numerous parties. In the memor-

andum filed by plaintiff, it cites the so-called Government reparation suits as an example. These actions involved many of defendants here and dealt with the reasonableness of the railroad explosives rates which had been in effect prior to the rate reduction in November, 1955. The suits were initially filed by the Government in September and October, 1947. It was not until February, 1955, almost eight years later, that the Commission ruled that the pre-1955 explosives rates were reasonable. Cf. 294 I. C. C. 5. Approval by the Commission of some of the Section 5a procedural agreements mentioned above consumed a great amount of time. This ranged from eleven months for the Western Traffic Association's agreement to two years nine months for the agreement submitted by the Southern Freight Association.^{1/}

The experience of the plaintiff in ACTA may also be relevant here. On pages two and three of the Memorandum of Aircoach Transport Association, Inc., et al., as amicus curiae, filed in our Court of Appeals in this cause (No. 14,562), it is stated that on April 18, 1958 the District Court in ACTA entered an order in which proceedings were to be instituted before the I. C. C. by one or more of the parties within 20 days of this date; that proceedings before the I. C. C. were commenced before it on April 22, 1958, by the filing of a petition or complaint initiating proceedings; and that the Commission has not yet acted on the issues referred to it under the District Court's order of reference.

1. WTA--Agreement application filed November 15, 1948; decided October 3, 1949, 276 I. C. C. 183. Eastern Railroads /TEA/ -- Agreements application filed December 7, 1948; decided March 15, 1950, 277 I. C. C. 279, Southern Freight Association, et al. -- Agreements, application filed January 5, 1949; decided October 18, 1951, 283 I. C. C. 245.

See also, Illinois Freight Association--Agreement, application filed April 28, 1950; decided August 17, 1951, 283 I. C. C. 17; Southern Ports Foreign Freight Committee--Agreement, application filed March 16, 1950; decided April 11, 1952, 284 I. C. C. 775; Railroad Interterritorial Agreement, application filed October 18, 1950; decided January 21, 1953, 287 I. C. C. 701.

Thus, it will be seen that it has been over eight months since proceedings were started before the Commission and as of October 31, 1958 it had not yet taken any action. Besides that, there is nothing to indicate to this court how long it will take for the Commission to render its decision in that case, and even after the Commission has rendered its decision, its ruling may be appealed by one of the parties. If this happens, considerably more time will undoubtedly elapse before the Courts will be able to render a final decision in that case.

It must also be remembered that in connection with defendants's motion to suspend proceedings, it also requests that all discovery proceedings regarding the rate reduction issue be suspended until the Commission has made its ruling.

It would thus seem that a reasonable time before Commission action might well be measured in years rather than months. The Court has taken into consideration the fact that this action has been pending more than four years; that it will be many months before a trial can be had, and that it will take from four to six months to try the case. It would be contrary to sound judicial discretion to permit this additional delay to this over-postponed litigation merely to seek an optional ruling from the Commission on the rate reduction aspect, which is not the sole or dominant issue in this case.

In addition, the very nature of the other overt acts alleged reveal the great importance of early consideration of these acts on their merits as soon as practicable. The claims and counterclaims in this case indicate continuing injury to the business of the various parties. Plaintiff's request for injunctive relief should be resolved without unnecessary delay. New delay will add to the difficulty of obtaining witnesses and will further dim memories of facts essential to all parties. The extraordinary cost to all parties of this litigation would also be increased.

Thus, the Court concludes that too much delay has already taken place in the disposition of this case. In fairness to all parties, the Court deems it essential to get to the merits of the case as speedily as possible.

Reference to the Commission would only serve to thwart this purpose.

II

In addition to the joint memorandum filed on behalf of most of the railroad defendants, Atlantic Coast Line and seven other Southern railroads filed a supplemental memorandum on September 29, 1958 raising questions allegedly relating to them alone. Two defendants who did not take part in the joint memorandum; namely, the Central Vermont Railway and the Grand Trunk Western Railroad Company, asked permission to file a memorandum containing their contentions with respect to the motion to suspend, and their request was granted. The questions raised by both memoranda will be considered together at this time.

The underlying contention here is that the rate reduction is clearly the dominant issue as to them and hence they, at least, should be permitted to litigate the question of antitrust immunity under 49 U. S. C. 5b(9) before the L. C. C. The southern railroads, on page 3 of their brief, point to statements by plaintiff's counsel in connection with an earlier motion that they were neither prime movers nor principal beneficiaries of the alleged defamation conspiracy. They also cite the depositions of plaintiff's principal officers to the effect that no official was able to state of his own knowledge what specific role was played by the southern railroads in the alleged defamation campaign outside of the publication of a certain anti-truck article in one of their magazines. At page 6 of their memorandum, the southern railroad defendants concede that they also made a contribution toward the production of a film by the Farm Roads Foundation. The publication of the magazine article is set forth in the complaint as one of the overt acts done to effectuate the conspiracy and the film production has been mentioned by plaintiff in affidavits as one of the concerted methods used by defendants in connection with the alleged conspiracy. The southern railroads admittedly took some part in the L. C. C. hearings in opposition to the application by Riss and other motor carriers for operating authority. As to the rate reduction it is said at page 8 of their

brief:

"While rates in southern territory were reduced several months later, in March and April of 1956, the reductions could hardly have been intended to and did not affect the competition of Riss since Riss does not operate to any significant extent in southern territory. Thus, the supplement to the complaint does not include this later reduction in its allegations."

Thus, it is clear that southern railroads are merely urging statements of fact and inferences contrary to those made by the plaintiff in its complaint and sworn affidavits. The court is asked to divide this litigation and to refer the rate reduction issue regarding a few defendants to the I. C. C. based on conflicting assertions as to how much or how little these few defendants may be involved in the issues raised by the complaint.

Despite the conflict, there seems to be a sufficient basis in the statements of defendants alone to connect them in some degree with the activities of the other defendants. Even if the evidence should show these defendants took only a small part in the alleged conspiracy, if they did so with knowledge of the conspiracy and consented to take part in it, then they assume equal responsibility for the acts of all conspirators. As was said in United States v. National City Lines, 186 F.2d 562, 571 (7th Cir. 1951).

"... Nor does the circumstance that certain of the supplier defendants had requirements contracts with one but not both of the City Lines defendants absolve those defendants of participation in the conspiracy charged in the indictment or prove that no such conspiracy existed; it was not incumbent on the government to prove that each defendant participated in that conspiracy in all of its ramifications, for, in order that one be found guilty as a conspirator, it need only be shown that, with knowledge of the existence of the conspiracy, he knowingly performed an act designed to promote or aid in the attainment of the object of that known conspiracy."

When one enters after the inception of a continuing conspiracy, he becomes liable for the acts of all the conspirators since the conspiracy is, in effect, renewed each day of its existence. United States v. Borden Co., 308 U.S. 188, 202 (1939); United States v. N. Y. Atlantic and Pacific Tea Co., 137 F.2d 459, 463 (5th Cir. 1943) cert. denied 320 U.S. 783 (1943). A reading of the complaint reveals that plaintiff will attempt to prove the existence of an antitrust conspiracy continuing over a period of several years. When dealing with such a charge, it is essential to consider the allegations as a whole and not to dismember it into many parts. United States v. Patten, 226 U.S. 525, 544 (1913).

Since, therefore, the defendants degree of participation cannot be judged before plaintiff has presented all its evidence and since even a lesser role in a conspiracy may bring about liability equal to that of prime movers, it cannot be said that any one allegation such as the rate reduction issue is of dominant importance as to these defendants.

These considerations apply with equal force to defendants Grand Trunk Western Railroad Company and Central Vermont Railway. They urge on page 3 of their separate memorandum that the only connection with the defamation allegations which has been so far adduced is the mere "mute membership" of each petitioner in two of the rail associations named as defendants, and that, hence, the rate reduction is the dominant issue as to them. They cite United States v. Food and Grocery Bureau of Southern California, 43 F.Supp. 966, 973 (S.D. Calif. 1942), to establish the principle that mere mute membership in an association charged with an unlawful criminal conspiracy will not impose liability upon a member. This would seem to be in accordance with the general principles of conspiracy law discussed above. Some degree of knowledge and consent to the conspiracy or some kind of knowing assistance given in furtherance of it is usually required to impose liability.

In their brief, these defendants simply deny any other connection with the alleged defamation conspiracy except "mute membership" in railroad associations which are defendants in the case and base this denial on

certain answers to interrogatories. On page 3 of their memorandum it is said:

" . . . Indeed, after almost four years of pleading and discovery procedures the only nexus relating the undersigned defendants to the alleged conspiracy is their membership in several railroad associations to whom Riss has imputed leadership in this supposed campaign of defamation. These two railroads were members of the Association of American Railroads and the Eastern Railroad Presidents Conference, and the Grand Trunk Western Railroad Company belonged to the Traffic Executive Association--Eastern Railroads (Central Vermont Railway, Inc., did not). However, no officer or employee of either railroad served as an officer in any of the associations. "

The Court is asked to accept the above statement at this stage of the case for the purpose of granting their motion to suspend proceedings as to them and refer the rate reduction issue to the Commission apart from the disposition of the motion with respect to the other defendants. However, this was not the question before Judge Yankwich in the Food and Grocery case which was particularly relied upon by defendants in this motion. That case does not stand for the proposition that allegations of membership in an association charged with a conspiracy, without more, warrants a dismissal of that party from the case before the Court has had an opportunity to hear the evidence. The statements relied upon by defendants were made by Judge Yankwich in connection with motions by various defendants to dismiss at the close of the government's case. The charges were dismissed as to some defendants after the government had presented its entire case because the Court was satisfied that the evidence had failed to establish consent to or participation in the alleged conspiracy. The Court approves of this procedure. If it appears at the end of plaintiff's case that the evidence does not adequately connect any defendant with the charges contained in the complaint, then a motion for a directed verdict as to such defendant may be entertained.

However, just as the Court could not logically dismiss defendants from the case at this point because it is not yet aware of what the evidence may show at trial, in like manner, it would not be proper to assume that these two defendants had little or no connection at all with the alleged defamation conspiracy in order to reach the conclusion that the rate reduction issue is the sole or dominant issue as to them. Besides, it is a well-settled principle of conspiracy law that a defendant may be held fully liable for the consequences of a conspiracy even though its degree of participation may turn out to have been somewhat less than that of other defendants.

The very sound judicial policy against dealing with litigation piecemeal also militates against defendants' position. Since the court could not proceed with the trial until the Interstate Commerce Commission had an opportunity to take action, unnecessary delay would result in this long-delayed case if the defendants' motion to suspend were granted.

CONCLUSION

The order of this Court dated May 26, 1958, denying the motion by certain railroad defendants to suspend proceedings in this case and to refer certain issues to the Interstate Commerce Commission for determination is hereby vacated.

For the reasons set forth in the above opinion, and in conformity with the orders of the United States Court of Appeals for the District of Columbia Circuit dated August 8, 1958 and December 16, 1958, the Court makes the following rulings:

1. The motion of defendant railroads to suspend proceedings and to refer certain issues to the Interstate Commerce Commission as supported by the memorandum on behalf of all movants filed September 29, 1958 as well as by the supplemental memorandum on behalf of Atlantic Coast Railroad Company, et al, filed September 29, 1958, is hereby denied.

2. The motion of defendants Central Vermont Railway, Inc., and Grand Trunk Western Railroad Company to have proceedings suspended as to them is hereby denied.

Counsel for plaintiff will submit an appropriate order in accordance with this opinion.

(S.) John J. Sirica,
United States District Judge

January 16, 1959.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RISS & COMPANY, INC.,

[Filed March 6, 1959]

Plaintiff

v.

Civil Action No. 4056-54

ASSOCIATION OF AMERICAN
RAILROADS, et al.

Defendants

ORDER

Pursuant to leave granted Plaintiff on February 24, 1959, to clarify Paragraph 14(B) of the Complaint by an appropriate amendment, it is, by the Court, this 6th day of March, 1959,

ORDERED, That Paragraph 14(B) of the Complaint herein be, and it hereby is, amended by the addition to the said Paragraph 14(B) of the following sentence:

"As a further example, defendants sought to maintain and impose other weight limitations applicable to the transportation of commodities generally, through a propaganda and public relations campaign based, in part, upon assertions of destruction and damage to highways created by long distance truckers."

AND IT IS FURTHER ORDERED, That defendants may file any pleading responsive to the said amendment within 10 days after entry of this Order.

/s/ John J. Sirica
United States District Judge

[HEADING OMITTED] Civil Action No. 4056-54 [Filed March 16, 1959]

ANSWER TO PARAGRAPH 14 (B) OF THE COMPLAINT AS AMENDED
OF THE DEFENDANT THE PENNSYLVANIA RAILROAD
COMPANY (66)

The Pennsylvania Railroad Co. by its attorneys answers paragraph 14(B) of the complaint as amended herein as follows:

This defendant adopts and incorporates by reference as if fully set forth herein its previous answer to paragraph 14.

/s/ Hugh B. Cox

(CERTIFICATE OF SERVICE OMITTED)

(HEADING OMITTED) Civil Action No. 4056-54 Filed March 17, 1959

ANSWER TO AMENDMENT TO PARAGRAPH 14(B)
OF THE COMPLAINT AS SUPPLEMENTED

Defendants (2) The Association of Western Railways, (8) The Atchison, Topeka and Santa Fe Railway Company, (9) Gulf, Colorado & Santa Fe Railway Company, (10) Panhandle & Santa Fe Railway Company, (16) Chicago, Burlington & Quincy Railroad Company, (17) The Colorado and Southern Railway Company, (18) Fort Worth and Denver Railway Company, (19) Chicago Great Western Railway Company, (21) Chicago, Milwaukee, St. Paul and Pacific Railroad Company, (22) Chicago and North Western Railway Company, (23) Chicago, Rock Island and Pacific Railroad Co., (26) The Denver & Rio Grande Western Railroad Company, (27) Duluth, South Shore and Atlantic Railroad Company, (31) Great Northern Railway Company, (32) Gulf, Mobile & Ohio Railroad Company, (33) Illinois Central Railroad Company, (36) Midland Valley Railroad Company, (37) Kansas, Oklahoma & Gulf Railway Co., (38) Oklahoma City-Ada-Atoka Railway Company, Inc., (39) The Minneapolis & St. Louis Railway Company, (40) Missouri-Kansas-Texas Railroad Company, (41) Missouri Pacific Railroad Company, (65) Northern Pacific Railway Company, (70) St. Louis-San Francisco Railway Company, (71) St. Louis Southwestern Railway Lines, (72) Southern Pacific Company, (73) Texas and New Orleans Railroad, (74) The Texas and Pacific Railway Company, (76) Union Pacific Railroad Company, (78) Wabash Railroad Company, (79) The Western Pacific Railroad Company, (80) Minneapolis, St. Paul & Sault Ste. Marie Railroad Company, (87) Chicago & Eastern Illinois Railroad Company, and (90) Quanah, Acme & Pacific Railway Company, for

answer to the Amendment to paragraph 14 (B) of the Complaint as Supplemented adopt and incorporate by reference as if fully set forth herein their answers to paragraph 14 previously filed with the Court.

/s/ Lawrence Cake

(Other signatures omitted)

(CERTIFICATE OF SERVICE OMITTED)

(HEADING OMITTED) Civil Action No. 4056-54 Filed March 25, 1959

**ANSWER OF EASTERN RAILROAD PRESIDENTS CONFERENCE
TO PARAGRAPH 14 OF PLAINTIFF'S SUPPLEMENTAL
COMPLAINT AS AMENDED BY ORDER OF
COURT DATED MARCH 6, 1959**

Defendant, Eastern Railroad Presidents Conference, makes answer to Paragraph 14 of the Supplemental Complaint of the plaintiff as amended by Order of Court dated March 6, 1959, to the extent to which the allegations contained therein are applicable to it, as follows:

14. This defendant denies the allegations of Paragraph 14 of the Supplemental Complaint as amended by Order of Court dated March 6, 1959.

ELEVENTH DEFENSE

28. This defendant's activities have been in the public interest and cannot form the basis of a claim under the antitrust laws.

This defendant's activities have consisted of bringing to the attention of the general public and appropriate state legislatures the facts, which the trucking industry has sought to distort and suppress, that heavy over-the-road trucks operated by plaintiff and others, are causing enormous damage to the nation's highways and that such trucks do not bear their fair share of the cost of building and maintaining such highways.

Studies made by governmental authorities, independent research organizations and others establish that heavy over-the-road trucks, particularly those carrying axle loads in excess of 18,000 lbs, are substantially responsible

for the destruction of the present highways. Such studies also show that heavy over-the-road trucks require the expenditure of large sums of money for building of new highways able to sustain the weight and accommodate the size of such vehicles and for the repair and rehabilitation of present highways damaged by such vehicles.

Since plaintiff and others operating heavy over-the-road trucks fail to pay for their proportionate share of the damage that such loads cause the highways over which they move, they are to that extent indirectly subsidized by the general public. Such subsidy to plaintiff and other operators of heavy over-the-road trucks is being paid from taxes imposed upon the general public for the construction of new highways with standards exceeding those necessary for ordinary highway traffic and for the repair and maintenance of extraordinary damage to present highways caused to a substantial extent by heavy over-the-road trucks. The burden upon other taxpayers, including defendant railroads, whose tax payments are devoted to the construction, repair and maintenance of roads is proportionately greater than it would be if those whose vehicles carry such excess loads were required to pay their fair share of highway costs.

Plaintiff and other users of large trucks, although operating only approximately 5% of the nation's freight carrying motor vehicles and 1% of the total vehicles using the public streets and highways, have sought to give the impression that they speak for all of the highway users including the operators of 8,700,000 small and medium size trucks and over 44,000,000 passenger cars, and have thus attempted to keep from the public and the legislatures information of the damage to the highways that they, a small fraction of the highway users, have caused and are causing, and to conceal the extent of the subsidy which they have received and are receiving.

Bringing to light these facts as well as facts with regard to consistent violations of the law limiting the weight and speed of heavy trucks which increase both the hazards on the roads and the physical damage thereto, is a legitimate activity beneficial to the public as a whole and cannot form the basis for an action under the antitrust laws, for such action must be predicated fundamentally upon a disservice rather than a service to the public.

(Certificate of Service Omitted)

/s/ Hugh B. Cox
(Other signatures omitted)

[HEADING OMITTED]

[Filed March 25, 1959]

ORDER FOR
FIRST PRE-TRIAL CONFERENCE

I

In order to further the progress of this case toward final disposition, it is now necessary to take concrete steps to eliminate unnecessary issues by stipulation or otherwise and to reduce the remaining issues into a form suitable for trial.

II

For this purpose, a first pre-trial conference will be held on Friday, May 1, 1959, at 10 A.M. in open court. At this conference counsel will be prepared to discuss all the issues relating to liability whether based on the complaint as supplemented, or upon a defense or counter-claim. A later conference will be scheduled in order to formulate the issues with respect to damages.

III

The first purpose of the conference will be to eliminate non-essential issues from the case. This may be done either by stipulation or by agreement that only certain issues will be relied upon at the trial by all parties.

IV

The second aim is to prepare a list containing, in brief form, all of the disputed issues of fact and law that exist on both sides of this case. The statements of fact should not be so detailed as to mention each transaction, conversation or document which is expected to be introduced as evidence at the trial. On the other hand, they must be stated with far greater particularity than is necessary to satisfy the rules of pleading. The test of specificity should be similar to that which would be used in summarizing the material facts to be set forth in an opening statement. Each issue of law relating to liability should also be set forth in a brief statement together with the single leading authority whether it be a statute,

rule, regulation or court decision.

V

To give counsel for all parties as well as the court a better opportunity to prepare for intelligent discussion, plaintiff and defendants will furnish the court and each other a list of the factual and legal issues which they contend arise out of their own claims, defenses or counter-claims on or before April 27, 1959.

VI

For the purposes of this conference, the court is not concerned with the truth or legal validity of the issues submitted. The task is solely that of defining with workable precision the real points of difference arising out of this controversy.

VII

Soon after the completion of the conference, the court will issue its first pre-trial order setting forth all the issues on liability. From the date of its issuance, this order shall apply to all proceedings involving the question of liability including the trial itself. This will not preclude the right of any party to apply to the court for an appropriate amendment to the order.

VIII

Wherever possible, defendants should get together and submit a joint statement of the issues arising from their claims.

IX

It is very desirable also that the counsel who will actually try the case be selected in the near future and be present at this conference.

X

In protracted cases such as this one, it is not feasible to permit the parties to introduce evidence as to events that took place over a long period of years prior to the filing of this case unless such matters are clearly relevant. Thus, when counsel prepare their issues for submission to the court and throughout all of the pre-trial discussions, it should be

- 310 -

borne in mind that a reasonable cut-off date as to background facts must be set in order to limit the scope of the inquiry.

/s/ John J. Sirica
United States District Judge

March 25, 1959

[HEADING OMITTED]

[Filed June 6, 1959]

INTERROGATORIES DIRECTED TO DEFENDANT RAILROADS

Plaintiff propounds the following Interrogatories to the defendant railroads to be answered as indicated herein, by each such defendant, or an officer or agent thereof, under oath, within 15 days of the service hereof, in accordance with Rule 33 of the Federal Rules of Civil Procedure:

A. To be answered by all railroad defendants:

For each calendar year, 1949-1957, inclusive:

1. During this calendar year, did your railroad transport any shipments of ammunition and explosives, for the account of the United States, in direct service, from point of origin to point of destination? If so,

a) Name each point of origin and destination of any such traffic, and

b) State, as to each origin point and each destination point named:

(I) the total tonnage of ammunition and explosives moved between that pair of points,

(II) the gross revenue derived from that traffic,

(III) the rates under which such traffic was moved, in dollars and cents per hundred pounds, and the dates during which such rates were in effect, together with a specific identification of each tariff or tender from which such rates derive, and

(IV) the net profit derived from that traffic, including a statement of the method by which such net profit was calculated.

2. During this calendar year, did your railroad originate any shipments of ammunition and explosives, for the account of the United States, at any point served by your railroad, where such shipments were delivered to destination by another rail carrier? If so,

a) Name each point of origin and destination of any such traffic,

b) State as to each origin point named,

(I) the total tonnage of ammunition and explosives transported by your railroad from that point consigned to each destination point to which any such traffic was directed,

(II) the gross revenue retained by your railroad for participation in the movement of such traffic between each pair of points named in response to Interrogatory A. 2(b)(I),

(III) the rates under which such traffic was moved, in dollars and cents per hundred pounds, and the dates during which such rates were in effect, together with a specific identification of each tariff or tender from which such rates derive, and

(IV) the net profit derived from that traffic, including a statement of the method by which such net profit was calculated.

3. During this calendar year, did your railroad deliver any shipments of ammunition and explosives, for the account of the United States, to destination, where such shipments were originated by rail carriers other than your railroad? If so,

- a) Name each point of destination of any such traffic, and
- b) State, as to each destination point named

(I) the total tonnage of ammunition and explosives delivered by your railroad to that point from each origin point which consigned such traffic to the named destination,

(II) the gross revenue retained by your railroad for the movement of such traffic between each pair of points named in response to Interrogatory A. 3(b)(I),

(III) the rates under which such traffic was moved, in dollars and cents per hundred pounds, and the dates during which such rates were in effect, together with a specific identification of each tariff or tender from which such rates derive, and

(IV) the net profit derived from that traffic, including a statement of the method by which such net profit was calculated.

4. During this calendar year, did your railroad transport any shipments of ammunition and explosives, for the account of the United States, where your railroad was neither the originating nor the delivering carrier? If so, give the total tonnage so transported, the gross revenue retained by your railroad for such transportation, and the net profit earned therein.

B. To be answered by all railroad defendants:

1. State whether your railroad, at any time from January 1, 1949 through January 31, 1958, has been subjected to the imposition of a civil or criminal penalty, or issuance of an injunction or a cease and desist order, by any state court or public utilities commission for violation of, or non-compliance with, any state statute or regulation, or by the Interstate Commerce Commission or any United States District Court for violation of, or non-compliance with, any of the following statutes, or any regulations promulgated thereunder:

- Interstate Commerce Act, Part I, 49 U.S.C. § 1-27
- Hours of Service Act, 45 U.S.C. § 61-64
- Transportation of Explosives Act, 18 U.S.C. § 831-835
- Elkins Act, 49 U.S.C. § 41-43
- Safety Appliance Acts, 45 U.S.C. § 1-15
- Ash Pan Act, 45 U.S.C. § 17-21
- Locomotive Inspection Act, 45 U.S.C. § 22-34
- Accident Reports Act, 45 U.S.C. § 38-43
- Adamson Eight-Hour Act, 45 U.S.C. § 65-66.

2. If so, state as to each such instance,

- a) the name of the court or administrative agency, and name and docket number or other official designation of the proceeding which resulted in the imposition of the penalty or issuance of the order,
- b) the nature of the sanction imposed (e.g., fine, cease and desist order, etc.), the date of its imposition, and, if a fine or civil penalty, the amount thereof,

c) a short summary statement of the facts giving rise to each finding of violation or non-compliance.

C. To be answered by the following railroad defendants, with respect to the allegations of their original counterclaims asserting operation by Riss over unauthorized routes, and the "aiding and abetting" of other motor carriers so to operate:

I Defendants Nos. (11), (12), (29), (66).

II Defendants Western railroads, except Defendants Nos. (27), (31), (65), (72), (73), (74), (79), (81), (90).

1. Identify each of the routes over which you claim Riss operated illegally and state the period covered by such illegal operation with respect to each such route.

2. Identify each of the routes over which you claim Riss aided and abetted "other operators of motor vehicles to transport property unlawfully," each of the operators so aided and abetted, the acts which constituted such aiding and abetting and the date of each such act.

3. As to each route named in response to the two foregoing Interrogatories,

a) State whether your railroad operates over such routes, either entirely or in conjunction with connecting carriers by rail; if in conjunction with connecting rail carriers, name the connecting carriers and the points of junction with such connecting carriers.

b) Name each common carrier other than Riss & Company which competed with you for traffic over such routes.

4. State as to each item of property which allegedly would have been transported by your railroad "but for the illegal operations of Riss":

a) (I) the date and weight of the shipment,

(II) a description of the commodity shipped,

(III) the name and address of the shipper and consignee,

(IV) the points of origin and destination,

(V) the conduct of Riss in connection with the shipment which you claim was illegal, the law allegedly violated thereby, and the place where the alleged violation occurred,

(VI) the applicable rate, and the charges or divisions that would have been assessed by you had this shipment moved over the line of your railroad,

(VII) the profit you claim you would have made on such shipments and the method by which such profit was calculated, and

(VIII) the facts upon which you base any claim that the shipment would have moved over your railroad but for the allegedly "illegal operations of Riss."

D. To be answered by

I Defendant (66) with respect to Count II of its counterclaim filed in February, 1958.

II Defendants Western railroads, with the exceptions noted under C II above, with respect to Count II of their counterclaims filed in February, 1958.

III Defendants Nos. (27), (31), (65), (72), (73), (74), (79), (81), (90), with respect to their counterclaims filed in February, 1958.

1. Identify each of the "other motor carriers" whom you claim combined with Riss in a conspiracy to eliminate the competition of your railroad in transportation of property for the United States.

2. Identify the "single carrier" to which Riss and other motor carriers allegedly delegated authority to tender rates in their behalf, and all tenders of rates purported to have been made by that carrier pursuant to that alleged delegation of authority, which were in effect at any time since February 1, 1954.

3. On what date do you contend that Riss entered into the conspiracy alleged in this Count of your Counterclaim?

4. Do you contend that the existence of the alleged conspiracy is evidenced in whole or in part by an express agreement, or express agreements?

a) If so, state as to each such agreement allegedly entered into,

(I) its date,

(II) the parties thereto,

(III) the substance thereof,

(IV) whether it is oral or written, and if written, state whether a copy thereof is in your possession, custody or control.

5. Identify the "competing routes" over which uniform rates are alleged to have been established, in furtherance of the conspiracy complained of, and as to each such route

a) identify the purported members of the alleged conspiracy who are in competition over that route,

b) identify the commodities or classes of commodities for which uniform rates have allegedly been established, and in effect at any time since February 1, 1954. Identify the particular tenders which established such rates, and state, in dollars and cents per hundred pounds, and by reference to specific rail tariffs and tenders and specific items therein, all railroad rates in effect at any time since February 1, 1954, on each of the commodities or classes named in response to this Interrogatory, and give the precise dates during which such rates were in effect.

6. If you claim that any shipment shown upon Revised Schedule "B" attached to the Plaintiff's answers served June 9, 1958 to certain Interrogatories served upon it by Defendants (11) B & O, et al., was diverted from your railroad as the result of allegedly "unlawful action" by "Riss and its co-conspirators," state as to each such shipment claimed to have been so diverted, each action which is claimed to have produced that result, the person who took such action and the date and place of its occurrence.

7. State the facts upon which you intend to rely to show that the ability of your railroad to perform transportation services was impaired by the conspiracy alleged in this Count of your Counterclaim.

E. To be answered by Defendant (66) and defendants Western railroads with the exceptions noted under C II above, with reference to Count III of the Counterclaim filed in February, 1958.

1. Do you claim that the alleged intent and purpose of Riss to monopolize, and to eliminate the competition of your railroad in transportation for the United States is evidenced by any act or document, other than the establishment of rates for such transportation? If so, describe and give the date of each such act, identify each document as to which such claim is made by its date, the parties thereto, and a summary of its contents.

2. Identify each tender or tariff and each item therein which established the rates of Riss complained of in this Count, which were in effect at any time since February 1, 1954, and the commodities or classes of commodities covered therein.

3. On what date do you claim that Riss commenced the acts complained of in this Count?

4. If you claim that any shipment shown upon Revised Schedule "B" attached to the Plaintiff's answers served June 9, 1958 to certain Interrogatories served upon it by Defendants (11) B & O, et al., was diverted from your railroad as the result of allegedly "unlawful conduct" of Riss, state as to each such shipment claimed to have been so diverted each action which is claimed to have produced that result, the persons who took such action and the date and place of its occurrence.

F. To be answered by all railroad defendants:

As to each answer made to the preceeding Interrogatories, specify:

1. The person or persons who prepared it or supervised its preparation.

2. The person or persons who furnished the information used in its preparation.

3. The documentary sources used in its preparation.

4. The identity and location of the files containing the documentary materials named in response to Interrogatory F. 3.

A. Alvis Layne, Jr.

Lester M. Bridgeman

952 Pennsylvania Building
Washington 4, D.C.

Robert L. Wright

Wyatt Building
Washington 5, D.C.

Attorneys for Plaintiff
Riss & Company, Inc.

Certificate of Service

I hereby certify that I have this 26th day of June, 1959, served the foregoing Interrogatories Directed To Defendant Railroads upon each railroad defendant in this action, by mailing a copy thereof, by first class mail, postage prepaid, to the attorneys of record for each such defendant.

Lester M. Bridgeman

[HEADING OMITTED]

[Filed June 29, 1959]

ORDER

Pursuant to leave granted Plaintiff in open Court on June 18, 1959 to clarify Paragraph 18 of the Complaint as Supplemented by an appropriate amendment, it is by the Court this 29th day of June, 1959

ORDERED, That Paragraph 18 of the Complaint as Supplemented be and it hereby is amended to read as follows:

"18. On or about Oct. 20, 1955, the railroad defendants herein caused to be submitted to traffic officials employed by the Department of Defense a uniform, unpublished rate quotation, by and on behalf of the railroads engaged in carrying explosives traffic in competition with the plaintiff. That quotation, as supplemented by later quotations issued in March and April, 1956, established railroad rates for carrying explosive shipments totalling more than 50,000 pounds which were nearly forty percent below the general level of such rates prevailing for the previous eight years. Said uniform and concerted rate reductions were intended to exclude the plaintiff from the business of carrying such shipments of explosives and have had that effect with respect to the principal points served by the plaintiff. Said quotations were made for the purpose of effectuating one of the principal objects of the conspiracy charged herein, to wit, the elimination of the plaintiff as a competitor with the railroads for explosives traffic and has substantially injured the plaintiff's business. The Interstate Commerce Commission has no jurisdiction over said quotations and plaintiff will continue to suffer substantial and irreparable injury from said illegal quotations until and unless the acceptance of traffic pursuant thereto is enjoined by this Court."

AND IT IS FURTHER ORDERED, That defendants may file any pleading responsive to the said amendment within ten days after entry of this Order.

/s/ John J. Sirica

UNITED STATES DISTRICT JUDGE

Seen:

/s/ Paul F. McArdle

Attorney for all defendants

[HEADING OMITTED]

[Filed July 30, 1959]

OBJECTIONS OF DEFENDANT (66) THE PENNSYLVANIA
RAILROAD COMPANY TO PLAINTIFF'S INTERROGATORIES

This defendant objects to interrogatories A, B, C, and the second sentence of interrogatory D. 5. (b), served by the plaintiff herein on June 26, 1959, and for grounds of objection assigns the following:

1. As to interrogatories A and B, on the ground that the matters inquired into hereby are irrelevant to any issue presented in this action.
2. As to interrogatory A, on the ground that the compilation of answers thereto would be unduly and unjustly burdensome, oppressive, and vexatious, as is more fully set forth in the affidavit of W. F. Warren attached hereto as "Exhibit A."
3. As to interrogatory C, on the ground that the same is premature, in that the matters inquired into thereby are admittedly sought by the plaintiff solely with respect to the allegations of the counterclaim of this defendant asserting operation by the plaintiff over unauthorized routes and the aiding and abetting of other motor carriers so to operate, which counterclaim is presently the subject of a pending motion for judgment on the pleadings dismissing the same, filed by the plaintiff on June 26, 1959.
4. As to the second sentence of interrogatory D. 5. (b), on the ground that the scope of the portion thereof which asks for all railroad rates in effect at any time since February 1, 1954 on certain items, and the date thereof, is so broad as to render the same irrelevant and meaningless; and on the further ground that the compilation of answers thereto would be unduly and unjustly burdensome, oppressive, and vexatious.

James H. McGlothlin

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing objections by mailing a copy thereof, postage prepaid, to A. Alvis Layne, Jr., Attorney for Plaintiff, Pennsylvania Building, Washington, D. C. this 30th day of July, 1959.

/s/ Paul F. McArdle
Paul F. McArdle

[HEADING OMITTED]

EXHIBIT A

AFFIDAVIT OF W. F. WARREN

I am employed by The Pennsylvania Railroad Company as Auditor of Freight Traffic, with offices at 1315 General Office Annex, 15 North 32nd Street, Philadelphia, Pennsylvania. The following statement relates to certain portions of Plaintiff's "Interrogatories Directed to Defendant Railroads" served June 26, 1959, insofar as they relate to The Pennsylvania Railroad Company.

To compile the information that is available in answer to Interrogatory "A" with the exception of Items (b)(IV) and the net profit in Item 4, would entail handling millions of documents and the work would take approximately one year to complete. In order to explain the work involved, there follows a description of the documentation, record keeping, and storing of available documents, together with the way in which the desired data would be prepared.

Freight shipments originate with a bill of lading embodying the contract between the shipper and the carrier. A copy of the bill of lading, called the shipping order, is retained by the carrier, and from this document a waybill is prepared. The original waybill accompanies the shipment from the origin to final destination. All Government shipments must be waybilled collect. The destination line-haul carrier bills the Government for all charges and, in the case of interline shipments, pays all other interested railroads their proportion of the charges.

When a waybill is prepared from the shipping order, a copy of it is sent by the origin agent to his audit office. The destination agent sends the original waybill to his audit office. On local shipments, of course, where the entire revenue accrues to the single railroad, that road keeps all the earnings. For interline shipments, the destination line-haul carrier prepares monthly interline settlements to all interested carriers, and each road is paid its proportion of the freight charges. The base document for interline settlements is called the abstract, and shows the necessary

information transcribed from a waybill together with the distribution of the freight charges between all interested carriers. One abstract may be used for each like-and-like shipment -- that is shipments of the same commodities from and to the same places over the same routes. On the Pennsylvania Railroad the average is approximately two waybills per abstract. The abstracts do not indicate whether or not the shipment is a Government shipment. In order to arrive at the divisions on Government shipments from the abstracts, it is necessary to refer to the waybills.

With ordinary freight, the agent at destination prepares a set of forms from the original waybill. The set of forms contains three documents -- (1) an arrival notice, (2) a delivery receipt, and (3) the freight bill. Additional copies may be made for other purposes. The arrival notice is sent to the consignee. The delivery receipt is sent to the delivery platform. The freight bill is sent to the cashier. The consignee picking up his freight after receipt of the arrival notice, presents this to the cashier and pays the freight charges. For credit patrons the charges are paid via U. S. mail. The cashier stamps the freight bill "Paid". This serves as the patron's receipt and as notice to the platform man to surrender the freight. Thus, ultimately everyone having to do with the shipment has an appropriate document: The shipper has the original bill of lading; the origin agent has a shipping order which is a copy of the bill of lading; the auditor has a copy of the waybill; the consignee at destination has the receipted freight bill showing payment; the destination agent has the signed delivery receipt; his cashier has a record of the payment in his cash book if it is a cash shipment; and the destination auditor has the original waybill reported by the destination agent. Thus, the destination auditor would have a copy of the waybill and the original waybill in the case of a local shipment. The auditor has a copy of the waybill for interline forwarded shipments and the original waybill for interline received shipments. In the case of an overhead shipment the auditor has no waybill or copy of waybill but only a copy of the abstract furnished by the destination road.

After the bill of lading is signed at the point of origin, the shipper keeps the bill of lading, but in the case of Government shipments a special government bill of lading is used and is mailed by the shipper to the consignee. When the Government shipment gets to destination, the agent, not being able to collect locally, takes the waybill into his account, and then after delivering the freight gets the Government bill of lading from the consignee properly certified as to receipt of freight. He sends the certified government bill of lading to his auditor to clear his account. From it is prepared a public voucher bill against the Government. In other words, the agent at destination, in lieu of money, has the consignee's certificate of receipt on the original bill of lading, and it is this document that must support the public voucher bill.

A copy of the freight bill, transcribed from the waybill by the destination agent, is sent with the certified Government bill of lading to the auditor. As will be mentioned in more detail later, in the case of the Pennsylvania Railroad, those freight bill copies are kept in a separate file. They constitute forms, 8-1/2 x 11 inches, showing the date, a description of the commodities, origin, destination, routing, weight, rate, and the charges. As to the rate shown, this freight bill copy does not show the tariff authority, nor does it show corrections of errors which may have subsequently taken place in the distribution of divisions, the settlement of claims, or the simple correction of errors.

The auditor files on the local forwarded shipments and interline forwarded shipments the copies of the waybill he gets from the agent, and on interline received shipments and local received shipments, he files the original waybill. On local shipments, in theory, the copy is held until the original is received, and these two documents are the basis for auditing received against forwarded shipments. (In practice this audit is performed from secondary documents.) On interline shipments the auditor prepares accounts on the received side, and checks his copy of the waybill against the interline settlement prepared by destination road. As to overhead shipments, the auditor uses "passing reports" prepared by off-going junction

agents to check the settlements of the destination carriers on the abstracts already mentioned. Thus, each railroad must have on file a copy of each abstract governing any interline shipment that this railroad delivered and prepared the account for, and also a copy of each abstract sent to it by any other road delivering shipments for which this road was the origin or an intermediate carrier. These abstracts are filed by the auditor on the basis of month of interline settlement and by order of roads and stations. The copies of interline forwarded waybills are filed for each month by order of destination road and by forwarding station number. Interline received waybills are filed for each month by order of origin road, each origin road by alphabetical forwarding stations, and each of these by numerical received stations.

In the case of Government shipments, the freight bills cover both local and interline received and are filed by billing months. Each month is filed in public voucher bill number order.

In the case of the Pennsylvania Railroad, the Government claims are filed in public voucher bill number order. The importance of the claim files will be discussed later. With respect to the search which would be required to answer the interrogatories, the freight bills for local and interline received are filed in order of the date of billing the Government. Thus, in order to reach shipments moved during the last months of 1957, it would be necessary to search several more months in 1958, though there would be no definite breakpoint at which certainty with respect to covering shipments handled during the entire year could be guaranteed.

The freight bills on the interline received and local shipments (a total of 785,000) are stored at the Merien Avenue record storehouse in Philadelphia. These are separately filed for Government shipments. On the interline shipments received, abstracts from January 1949 to June 1956 are in the same storehouse, and July 1956 to December 1957 are in the General Office Annex at 32nd Street and Lancaster Avenue, Philadelphia. The interline forwarded waybills prior to July 1953 have been destroyed. From July, 1953 to December, 1957, such waybills are in the record storehouse. The

Government freight bills, while they might have been destroyed under I. C. C. regulations, have been retained by the Pennsylvania Railroad over a considerable period of time, because of the frequency with which the Government has brought claims on long past shipments. As claims have been filed by the Government, the freight bills have been removed from storage and are attached to claim files, a total of 61,000. The claim files are at the General Office Annex.

The Interstate Commerce Commission regulations permit destruction of waybills after two years and of interline settlements (abstracts) after four years. As a matter of Company policy the Pennsylvania Railroad keeps both documents for six years. As mentioned, the Government freight bills, though they might have been destroyed, have been kept for Company use in connection with Government claims. The GAO has in the past filed claims on shipments as old as 17 years. It is for this reason that Government freight bills on interline received and local shipments are available back to 1949, and the same reason applies for keeping the abstracts on the interline received. However, the 6-year Company policy explains the cut-off date of 1953 with respect to interline shipments forwarded.

Turning to the mechanical work involved in abstracting the data covered by the interrogatories, it would be necessary to leaf each of the basic documents in order to locate the specific shipments from which the totals would be calculated. This would entail leafing 724,000 freight bills on local and interline received traffic, 5,355,000 waybills on interline traffic forwarded (it will be remembered that these, unlike the Government freight bills, are not stored separately for Government traffic), 22,285 abstracts (the approximate number which would have to be consulted in order to determine divisions on explosives shipments located from the freight bills and waybills), and 61,000 claim files in order to locate freight bills on Government explosives shipments which have been removed from the freight bill file.

This work could be done by clerks in approximately the middle bracket (Grade C) except for the determination of revenues from the abstracts,

which would require lower grade (Grade F) work. The mechanics would entail "flagging" pertinent shipping documents, as by colored markers, so that each category of shipment could be then abstracted by Grade C clerical forces. This abstract would entail the preparation by such personnel of an individual form for each shipment, drawing off the date commodity, origin, destination, weight, routing, rate, and charges. Based on an overall estimate of the volume of shipments of ammunition and explosives, this would entail the preparation of 45,358 documents. At this point, in order to check the rate and insert on these documents the data required by (b)(XII), it would be necessary to use experienced traffic personnel (Grade A). Following this, in order to arrive at totals required by (b)(X), the forms so prepared would have to be sorted and then recapitulated and totaled. The recapitulation would, it is estimated, involve a total of over 9,000 entries. In all, this procedure would involve handling over 6 million documents. This work would require approximately 92,439 man-hours and cost at regular rates for the various types of personnel required, \$221,818. However, for various reasons it would be necessary to do substantially all of this work on overtime, involving increased rates, and the cost as a practical matter would be \$332,646.

A considerable part of the work required to perform the above operations is specialized and requires the use of experienced personnel. Furthermore, all of this work is of the kind covered by our union contracts. These require that such work be performed: (1) by our own employees, (2) at fixed rates for each grade. Therefore, it would be impossible to employ special clerical forces to do the work, both as a practical matter and as a result of union rules.

To do the work with our own forces raises serious practical problems. Such forces as we now have have been stripped as a result of general and special conditions. In the past two years, 200 of the employees who would have to be used have been laid off. As a result of the current steel strike, the force has been reduced by 24 people. The remaining staff is fully utilized, and there is no way to perform the work required during

ordinary working hours. Therefore, the work would have to be done after hours at overtime rates of pay.

These conditions impose an additional limitation. It has been our experience that, even if employees are willing, the maximum efficient use of overtime is approximately 12 hours per man per week. This in view of the limited personnel available, places a limit on the rate at which the work can be done. The task could not be accomplished in less than one year.

STATE OF PENNSYLVANIA : SS.
COUNTY OF PHILADELPHIA:

I, W. F. WARREN, Auditor of Freight Traffic of The Pennsylvania Railroad Company, state that I have read the foregoing statement relating to certain interrogatories served by Riss & Company, Inc., upon The Pennsylvania Railroad Company in this action and that all matters stated therein are true and correct to the best of my knowledge, information and belief.

/S/ W. F. Warren

W. F. Warren

Subscribed and sworn to
before me this (illegible)
day of July, 1959.

/S/ (illegible)

Notary Public

Notary Public, Philadelphia,
Philadelphia Co. My com-
mission expires February 1st, 1961

COVINGTON AND BURLINGAME [Filed August 1, 1959]
UNION TRUST BUILDING
WASHINGTON 5, D. C.

30 July 1959

Honorable John J. Sirica
United States District Court
U.S. Court House
Washington, D. C.

Re: Riss & Co. v. A.A.R. C.A. No. 4056-54

Dear Judge Sirica:

On behalf of the defendants Nos. 4, 11, 29, 20, 66, 64 and 68, we wish to advise that the answers heretofore filed in this case stand as their answers to paragraph 18 as amended by your Order of June 29th, 1959.

I am also authorized by Edward Wheeler, Esquire, on behalf of defendants Nos. 15, 58 and 59 to state that the answers heretofore filed by these defendants stand as their denial to paragraph 18 as amended by your Order of June 19, 1959.

Very truly yours,

/s/ Paul F. McArdle

CC: A. Alvis Layne, Esq.

[HEADING OMITTED]

[Filed October 5, 1959]

PLAINTIFF'S STATEMENT RESPECTING "PERIPHERAL" DEFENDANTS

Paragraph III of the Order For Second Pre-Trial Conference entered June 30, 1959, directed Riss to submit "a detailed statement of the evidence which it contends connects any one or all of the so-called 'peripheral' defendants with the allegations made by plaintiff in its complaint....." The Court had previously indicated that the preparation and review of such a statement would permit a determination with respect to the retention of so-called "peripheral" defendants for the trial.

By its Pre-Trial Memorandum Of Facts And Law As To Liability, filed May 22, 1959, Riss presented a comprehensive statement of the evidence then available to it respecting the existence and nature of, and membership in, the conspiracy complained of, and respecting the kinds of acts committed in furtherance of the conspiracy and the defendants directly participating therein. Riss believes that no further information is necessary to establish the liability of each defendant now in the case. In the circumstances of this case, no railroad defendant is entitled to dismissal as a matter of law. United States v. National City Lines, et al., 186 F.2d 562, 571-572 (CA 7, 1951), cert. den. 341 U.S. 916; Sperry Products, Inc. v. Association of American Railroads, et al., 132 F.2d 408, 410 (CA 2, 1942), cert. den. 319 U.S. 744.

Riss recognizes, nevertheless, the desirability of reducing the number of defendants in this case in the interest of simplifying and expediting the trial. Counsel for Riss, accordingly, have carefully reviewed the situation of each individual railroad defendant to determine which railroads might be dismissed without handicapping Riss in the most effective presentation of its case, or otherwise jeopardizing its position. They have concluded that those railroads named in Appendix "A" hereto are such defendants. The defendants named therein are the only "peripheral" defendants in this case.

Riss hereby offers to dismiss from the case each of the railroad defendants named in Appendix "A" subject to the following conditions:

1. That any such defendant which has filed a counterclaim against Riss will direct the dismissal of its counterclaim simultaneously with Riss's dismissal of the complaint as to it.
2. That each parent corporation of any railroad which is identified in Appendix "A" as a subsidiary will stipulate that any evidence that would have been admissible against the subsidiary, if it were not dismissed, will be admissible against the parent.
3. That this offer to dismiss will not become final and binding upon Riss until ten days after the submission to it of the last of the documents which defendants (2) Association of Western Railways, (3) Traffic Executive Association - Eastern Railroads, and (66) The Pennsylvania Railroad have been directed by the Court to turn over to Riss by Order entered September 30, 1959.

Appendix "A" is a complete and exhaustive list of those defendants which in Riss's view can be dismissed from the case without jeopardizing Riss's position. Riss does not intend voluntarily to dismiss at any time in the future any defendants other than those named in Appendix "A."

Respectfully submitted,

A. Alvis Layne

Lester M. Bridgeman

Morton A. Brody

Pennsylvania Building
Washington 4, D.C.

Robert L. Wright

Wyatt Building
Washington 5, D.C.

Attorneys for Plaintiff
Riss & Company, Inc.

[CERTIFICATE OF SERVICE OMITTED]

APPENDIX "A"

- * (9) Gulf, Colorado & Santa Fe Railway Company
- * (10) Panhandle & Santa Fe Railway Company
- (14) Central Vermont Railway, Inc.
- * (17) The Colorado and Southern Railway Company
- * (18) Fort Worth and Denver Railway Company
- (19) Chicago Great Western Railway Company
- (20) Monon Railroad
- (26) The Denver & Rio Grande Western Railroad Company
- (27) Duluth, South Shore and Atlantic Railroad Company
- (30) Grand Trunk Western Railroad Company
- (32) Gulf, Mobile & Ohio Railroad Company
- (35) Louisville & Nashville Railroad Company
- (36) Midland Valley Railroad Company
- (37) Kansas, Oklahoma & Gulf Railway Company
- (38) Oklahoma City-Ada-Atoka Railway Company, Inc.
- (39) The Minneapolis & St. Louis Railway Company
- * (59) The Pittsburgh & Lake Erie Railroad Company
- (64) Norfolk and Western Railway Company
- (68) Reading Company
- (71) St. Louis Southwestern Railway Lines
- * (73) Texas and New Orleans Railroad
- (74) The Texas and Pacific Railway Company
- (77) The Virginian Railway Company
- (79) The Western Pacific Railroad Company
- * (82) The Cincinnati, New Orleans & Texas Pacific Railway Company
- * (83) Georgia Southern & Florida Railway Company
- * (84) The Alabama Great Southern Railroad Company
- * (85) New Orleans & Northeastern Railroad Company
- * (86) Carolina and Northwestern Railway Company
- (87) Chicago & Eastern Illinois Railroad Company
- (90) Quanah Acme & Pacific Railway Company

* Subsidiary

[HEADING OMITTED] Civil Action No. 4056-54 Filed October 6, 1959

MEMORANDUM OF DEFENDANTS (8), (9), (10), (16), (17), (18), (19), (21), (22), (23), (26), (32), (33), (36), (37), (38), (39), (40), (41), (66), (70), (71), (76), (78), AND (87) CONCERNING DAMAGES UNDER COUNT II OF THEIR
COUNTERCLAIMS

This memorandum is filed in accordance with Paragraph II of the Court's Order for Second Pre-Trial Conference, dated June 30, 1959, requiring the plaintiff and defendants who have filed counterclaims to "submit to the Court and opposing counsel no later than October 5, 1959, their detailed factual and legal pre-trial statements on damages." It is in the nature of a progress report to the Court on the state of the counterclaimants' development of Count II of the counterclaims. Count I is subject to a pending motion to dismiss, and consideration of it is premature until that motion is disposed of; Count III is being dismissed voluntarily.

We regret that this statement cannot be as detailed as we had hoped it could be when the Court's order was first issued. A variety of obstacles has stood in the way. Earlier in the summer defendant The Pennsylvania Railroad (66) propounded interrogatories to the plaintiff that were expected to be of material assistance in the uncovering of facts relating to damages suffered by these counterclaimants, thereby enabling us to give the Court and the plaintiff as full a statement of our evidence as possible as early as practicable. However, the plaintiff has objected to these interrogatories, and these objections have yet to be disposed of. In the absence of answers to these interrogatories, analysis of the material already obtained from the plaintiff has been necessarily even more laborious and time-consuming. The counterclaims have retained a staff of trained men to do the necessary technical work on the raw rate materials; this work is under way; but it is not yet sufficiently far along to provide the basis for a detailed and definitive memorandum of fact.

This statement will therefore concern itself with the methods the counterclaimants propose to use in proving the damages they have suffered by reason of the unlawful acts complained of in Count II of the counterclaims. When the detailed evidence on which the counterclaimants will rely to prove their damages has been developed by the work now in progress, supplemental memoranda will be filed to keep the Court and the plaintiff informed.

In accordance with what we understand to be the Court's intention in its order of June 30, this memorandum is limited to matters affecting the quantum of damages. It will be assumed throughout that the plaintiff's liability (including both the violation of law and the direct causal connection between such violation and injury to the counterclaimants) has been demonstrated, and that the only problem remaining is that of showing the amount the counterclaimants can recover.

The contemplated proof will present two main heads of damage. The first will be the broad loss of business suffered by the defendant railroads by reason of a combination and conspiracy to injure and destroy the rail carriers' competition for the carriage of property for the Government, and to monopolize that carriage. (Paragraph 4(a)-(b) of the counterclaim). The second is the joining by the plaintiff with other truckers in the establishment of uniform rates for traffic for which they were competitive -- in effect, price-fixing agreements. (Paragraph 4(c) of the counterclaim) We will deal with each of these in turn.

I.

As far as we are presently able to determine, the defendants' claim for damages under the broad aspect of Count II will be limited to the plaintiff's participation in combinations and conspiracies to destroy the competition of the railroads in the specific market consisting of the transportation of ammunition and explosives for the account of the United States. The damages incurred by these defendants as a result of these activities can necessarily be arrived at only by means on informed estimates; but we conceive it to be our task to provide more accurate grounds for arriving at such an estimate than the speculative guesswork, based on some hypothetical going-concern value, that the plaintiff has heretofore tried to justify in his own case. Only when a full study of available statistics has been completed will it be possible for us to describe with certainty the course of proof we will follow. We can only say that at this point we contemplate including in our proof a statistical study of the difference between the competitive pattern of rail and truck traffic in general commodities and the competitive pattern in ammunition and explosives. Such a study is expected to demonstrate a marked difference between the two, traceable to the activities of the combination of motor carriers of ammunition and explosives of

which the plaintiff was a leading member. We anticipate that such a study would show clearly the tonnage of this class of commodity that may fairly be said to have been diverted from the railroads by the unlawful combination of which the plaintiff was a part. A further statistical study would then indicate with fair accuracy what proportion of this tonnage would have been carried by each of these defendants absent the conspiracy, from which it will be possible to calculate at least the minimum net profit that in the lawful course of things would have accrued to each of these defendants from that traffic.

We cannot at this time be any more specific on this phase of our counterclaim, pending completion of suitable statistical analyses. This work, like other aspects of the preparation of this case, is complicated by the impact at various points of the military security program; and by the fact that until very recently motor carriers did not file with the Interstate Commerce Commission commodity statistics that reported ammunition and explosives separately from general commodities. However, we believe it to be any claimant's duty to furnish the trier of fact with a reliable basis for the assessment of damages. We do not propose to attempt to inflate our damages by the juggling of vague and speculative figures. Upon the completion of an analysis deemed by us to be suitably accurate to serve as a proper basis for proof of damages, we will submit it to the Court and to the plaintiff.

One word might be added as to one aspect of the law on this score. It is a black-letter rule that one conspirator is liable for the wrongs done by the entire conspiracy, even though no other conspirator is sued, and even though the particular matter complained of benefited other conspirators than the one sued. E.g., City of Atlanta v. Chattanooga Foundry & Pipeworks, 127 Fed. 23 (6th Cir. 1903), affirmed, 203 U.S. 390 (1906). This is a specific application of the hornbook principle that "each of two or more persons whose tortious conduct is a legal cause of a harm to another is liable to the other for the entire harm." Restatement, Torts, §875. Similarly, in equity an injunction may issue against only one conspirator. E.g., Martin v. Chandler, 85 F.Supp. 131 (S.D.N.Y. 1949). Whatever recourse for contribution Riss & Co. may have

against the other motor carriers who combined with it to parcel out among themselves the lucrative field of Government explosives carriage, there can be no question that the plaintiff itself is liable to each of these defendants for all the injury done each of these defendants pursuant to the conspiracy by any and all members thereof.

II.

In addition to the substantial damages which we intend to show were suffered by these defendants by reason of the broad conspiracy against the railroads of which the plaintiff was a part, we intend also to offer evidence of the injury these defendants suffered from other unlawful activities that relate directly to rates.

The plaintiff on many occasions has quoted rates for the transportation of Government traffic between two given points jointly with other motor carriers who competed with the plaintiff for that traffic. The quoting of these rates resulted in substantial diversion of traffic from these defendants to the plaintiff and the plaintiff's co-conspirators. We expect to present evidence showing the volume of traffic lost by these defendants at these points and of the profits that would otherwise have been obtained by these defendants which were diverted by the collusive rate-fixing of the plaintiff and those who joined with the plaintiff. Unfortunately, at this time we are not able to describe in any detail the course which this proof will take. The collection and analysis of relevant evidence is still going on; and when this process is sufficiently completed to permit a full description of the facts which will be adduced to prove our damages under this head, we will furnish the Court and the plaintiff with a supplemental memorandum setting them forth in suitable detail.

We can, however, describe with some precision the proof we will offer to an important subhead of the traffic diverted from these defendants through the plaintiff's collusive rate-fixing. Earlier in the course of discovery proceedings in this case the plaintiff furnished some defendants with a document

some four or five inches thick denominated. "Revised Schedule B". This is a bulky IBM tabulation that purports to list every shipment of commodities falling under the category of Class A or B explosives hauled by the plaintiff for the United States during the years 1949-1957, inclusive, apparently prepared as the "complete point-by-point analysis" described by the plaintiff in its Memorandum as to Proof of Damages of February 14, 1958 (at p. 5). For each shipment, the schedule lists origin and destination points, weight, rate, Riss' net revenue, and other information. It does not, however, specify the specific commodity involved, other than the general classification of "ammuniton and explosives". We propose to analyze all relevant Riss rate tenders during the four year period covered by its counterclaims to determine which were collusive. We also propose to identify in Revised Schedule B the movements that were made - during the period under each such rate that was illegal by reason of collusive action between the plaintiff and one or more competing lines. Next, by analysis of the routes and rates of each of the counterclaimants, we propose to determine what portion of each such shipment each counterclaimant would have carried in the absence of the illegal rates. Finally, we propose to provide a basis for an approximation of the profit each such defendant would have made on the freight it should have carried.

The amount of the traffic carried by the plaintiff and its co-conspirators under unlawful rates that could have been carried by these defendants can be determined with fair accuracy by an application of the routing policy of the Armed Forces during the period in question. That policy, in brief, was to route traffic by whatever carrier quoted the lowest rate, unless such special factors intervened as transit time or other service considerations, or unless on a particular commodity at a particular installation handling costs varied between carriers in such a way as to render a carrier with the same or a higher rate actually the cheapest overall method of transportation. If the lowest available rate for a particular movement was quoted both by railroads and by motor carriers, the traffic would be divided approximately equally between the two modes over a period of time. Within a mode, if more than one trucker or

railroad was able to perform the service at the same cost, that mode's traffic would be divided approximately equally between them.

Hence, it is possible to take a specific movement shown on Revised Schedule B and show with fair accuracy what amount of traffic such a movement would have represented to the counterclaimants. Two actual examples of the method of those calculations are shown in the Exhibits to this memorandum. The first involves traffic from Indiana Arsenal to Umatilla Ordnance Depot, Oregon. The second involves movements from Umatilla to Sunflower, Kansas. We will use the example in Exhibit I to illustrate the method we propose to employ to develop these damages.

A motor carrier organization called Rocky Mountain Motor Tariff Bureau, Inc. was used by a number of motor carriers, including the plaintiff, as a vehicle for price agreements. Typically, the plaintiff and other motor carriers would employ this Bureau as an agency for offering to the Government the same rate for transportation between two given points, no matter which of the competitive truck routes the Government might use -- in short, a price-fixing arrangement. For example, during September and October, 1955, eleven truckers, including the plaintiff, were in collusion to fix the rate on ammunition and explosives between Indiana Arsenal and Umatilla; five different competitive routes were offered, all at the same rate. Revised Schedule B shows a number of movements from Indiana Arsenal to Umatilla that were performed under this illegal agreement during those two months. Exhibit I traces through the derivation of the revenue that would have accrued to these defendants had that traffic been carried lawfully by the railroads instead of unlawfully by collusive truckers, as applied to movements between these points totaling 718,800 pounds.

Indiana Arsenal is served by the B&O and the Pennsylvania; Umatilla is served by the Union Pacific only. In accordance with the Government routing policy above described, if this traffic had moved lawfully by rail rather than under illegal truck rates, half of it would have been routed by each

of the carriers directly serving the originating point; i. e., 359,400 pounds by the B&O (not a counterclaimant under this count) and 359,400 pounds by the PRR. The Union Pacific would necessarily have been the delivering carrier on all shipments, being the only railroad serving Umatilla. Revised Schedule B indicates that 601,020 pounds of the total 718,800 moved before October 20, 1955. The rail rate on this amount would have been \$6.275 per hundred pounds, or a total revenue of \$37,668.93. The rail rate on the remaining 117,780 pounds would have been \$5.0315 per hundred pounds, or a total revenue of \$6,246.41.^{1/} The grand total rail revenue had these shipments been lawfully made by rail would have been \$43,915.34. Under division agreements in effect at that time, the Union Pacific would have been entitled to 72.6% of this sum, or \$31,882.31.^{2/} The total rail revenue from the one-half of the traffic that would have been routed via PRR would have been \$21,957.67; under division agreements in effect, the PRR would have been entitled to 13% of this sum, or \$2,854.48. In other words, the illegal traffic in which the plaintiff participated just between these two points during this short period would have been worth a gross amount of nearly \$35,000 to these

^{1/} According to Revised Schedule B, the October movements under consideration aggregated 508,170 pounds, and moved during the period October 5 - October 24, 1955, thus chancing to straddle the rail rate reduction of October 20. Had this shipment gone by rail it is probable that it would all have moved well before October 20; perhaps, indeed, all in one train on the first day, rather than in scattered truckloads over a three-week period. However, we have applied the lower rate to traffic that in fact moved after October 20, since we wish in every instance to err on the low side if we err at all.

^{2/} All rail routes in effect on this movement at the time of our example included the Union Pacific from Missouri River crossings to Umatilla, with this percentage of revenue to the Union Pacific. Similarly, all such routes included the B&O or the Pennsylvania from Indiana Arsenal to Chicago, with a 13% division. Matters will not always be that simple; sometimes the rail routes in effect between two points will result in different divisions of revenue to a given railroad, depending on which route is chosen. In such cases we intend to make our computation on the basis of the lowest such division, since regardless of routing it is clear that such a movement would have resulted in at least that much revenue to the counterclaimant involved.

two counterclaimants alone, leaving out of account its value to other intermediate rail carriers as to which we have as yet made no calculations.

Even this, however, does not tell the whole story. There must have been illegal traffic attributable to this same unlawful combination which the plaintiff did not carry, but for which the plaintiff is liable under the familiar principles of law already referred to. Two different originating motor carriers (Adkins Transfer Co., Inc. and Falls Cities Transfer and Storage Company, Inc.) participated in the particular price-fixing arrangement in question. The plaintiff participated in only one route with Adkins, and in none with Falls Cities. Under the Government policy of dividing traffic equally among originating carriers within a mode that was quoting the same rates, as much tonnage must have been shipped via Falls Cities as via the route that included Riss; hence, the members of the illegal combination must in fact have carried under their illegal rate at least twice the tonnage shown on Revised Schedule B, and hence deprived the railroads of a total revenue of \$87,830.68, of which \$5,708.96 was diverted from the PRR and \$63,764.62 from the Union Pacific. (In reality, the figure probably has been even higher, since there may have been a substantial tonnage shipped via Adkins in conjunction with carriers other than Riss.)

The last operation to be performed in this extended calculation of damages from a particular movement is the derivation of the net profit to the counterclaimants that the lost revenue would have represented. Here an element of uncertainty enters. As was brought out in connection with the plaintiff's last round of interrogatories, it is not possible to calculate accurately the net profit attributable to an individual shipment. We expect to develop factors that will show at least the minimum profit reasonably attributable to a given amount of revenue, though this investigation has not yet been carried through by the accounting departments of the counterclaimants. Assuming arguendo that 50% of the net revenue would be profit -- a wholly random figure that is probably unrealistically low -- the profit in our example would

be \$2,854.48 for the PRR and \$31,883.31 for the Union Pacific. Trebled, this represents a recovery of \$8,563.44 and \$95,649.93, respectively, to these two counterclaimants on this example alone of two specific movements in a two month period.

The calculations in Exhibit II are carried out in the same way. Here there were two delivering railroads between whom the Government would again have divided the traffic approximately equally. Here, too, there must have been twice as much traffic as is shown on Revised Schedule B, since both Riss and Watson Bros. were possible delivering truckers within the conspiracy. This example is limited to the brief period from November 4 to December 3, 1954. The trebled damages to the Union Pacific as a result of the truckers' unlawful carriage of this traffic comes to \$98,010.21.

These two examples are but a very small portion of the voluminous whole. They represent only two pairs of origin and destination points, and only two very brief periods of time. However, since a full analysis has not yet been completed, we have given this extended explanation of these examples for this memorandum. The making of this full analysis will be an immense task. It involves reading through countless Section 22 tenders in order to bring together the numerous instances in which Riss participated in unlawful price-fixing arrangements; it involves the collation of this information with the movements shown on Revised Schedule B; and it involves the compilation of the railroad rate information needed to calculate the revenue that would have accrued to the railroads had they carried the traffic involved. The necessary rate analysis, both of Riss tenders and of railroad material, is enormous in extent. (Several of our interrogatories of July 31 were propounded with a view to the shortening of this labor, but the plaintiff has objected to these interrogatories.) The Government quotations of the Rocky Mountain Motor Truck Bureau alone occupy two full file cabinets, or eight file drawers; the entire collection of Riss tenders through the RMMTB, the Middlewest Motor Freight Bureau, the Middle Atlantic Conference, the Southwestern Motor Freight Bureau, and other unlawful combinations occupies approximately twenty-five file drawers. (In other words, these

technical and often complicated documents would make a pile about fifty feet high.) All this material must be analyzed by trained men familiar with motor carrier rates and traffic. The task of collecting the relevant railroad material is even larger. For several months a staff of experienced railroad rate men has been engaged full-time in compiling a history of rail ammunition and explosives rates and tenders during the relevant period. This job has not yet been completed, and will not be for some time to come. But it must be done in order to match rail rates against illegal trucker movements. Even after all rate analysis has been done, there will remain the mechanical task of working through the required calculations outlined above for each movement. It will be observed that even our two short examples required a considerable number of computations, plus reference at various points to the compiled rate material; and they are only two out of an enormous but still indeterminate number.

We are thus not yet in a position to give even an estimate of the amount of damages we expect to be able to prove by this method. We can only say that we expect them to be very substantial, measured in the hundreds of thousands or millions of dollars. We are aware of the magnitude of the task we have undertaken in our effort to give the trier of fact something better than estimates to go on, and we are in the process now of carrying this work out. In view of the technical nature of the material involved, we intend to embody our finished results in a compendious statistical exhibit or exhibits, which will be submitted to the plaintiff for verification against the underlying data. We regret that we are not yet able to say when this will be. Rail rate analysis is well along, and truck rate analysis is in progress, but after both are completed will come extensive mechanical work such as is illustrated in the Exhibits hereto.

There remains another head of damages from joint rate-fixing quotations by the plaintiff and other motor carriers. In some cases these defendants retained traffic by reducing their rates to meet an illegally fixed rate offered by the plaintiff and its competitors. Where this took place, the measure of damages is the difference between the revenue the defendant or defendants involved would have received had the plaintiff's conspiracy not forced it to reduce

its rates, and the revenue it actually received. Here no calculating of net profits is involved, since costs would be the same under either set of circumstances. Here, too, we can only say at this point that we will furnish full facts in a supplemental memorandum as soon as the process of investigation now under way has been completed.

Respectfully submitted,

/s/ James H. McGlothlin

Attorney for Defendants

(CERTIFICATE OF SERVICE OMITTED)

[Filed October 6, 1959]

EXHIBIT I

INDIANA ARSENAL, CHARLESTOWN, INDIANA TO
UMATILLA ORDNANCE DEPOT, OREGON

A.

- (1) Motor carrier rate - 590 cents per 100 pounds

Source - Rocky Mountain Motor Tariff Bureau Quotation 43-D, Item 600, page 72, Route 104

Participating motor carriers and routes -

- (a) Adkins Transfer Co., Inc. or Falls Cities Transfer and Storage Co., Inc. to Louisville; Hayes Freight Lines, Inc. to Chicago; Consolidated Freightways, Inc. to Umatilla.
- (b) Adkins Transfer Co., Inc. to Jeffersonville, Ind.; Riss & Co. to Denver; Ashworth Transfer, Inc. to Salt Lake City; Garrett Freightlines, Inc. to Pendleton, Oregon; Sites Silver Wheel Freightlines to Umatilla.
- (c) Adkins or Falls Cities to Louisville; Hayes to Chicago; Watson Bros. Transportation Co., Inc. to Denver; Ashworth to Salt Lake City; Garrett to Pendleton; Sites to Umatilla.
- (d) Adkins or Falls Cities to Louisville; Hayes to Chicago; Watson to Denver; Gallagher Freight Lines, Inc. to Salt Lake City; Garrett to Pendleton; Sites to Umatilla.

- (e) Adkins or Falls Cities to Louisville; Hayes to Chicago; Watson to Denver; Ringsby Truck Lines, Inc. and Goldstein Refrigerator Line to Salt Lake City; Garrett to Pendleton; Sites to Umatilla.
- (2) Freight transported by Riss & Co. (from Revised Schedule "B") -
- | | | |
|-----------------------------------|---|--------------------|
| Sept. 7, 1955 to October 19, 1955 | - | 601,020 lbs. |
| Oct. 20, 1955 to October 24, 1955 | - | 117,780 " |
| | | <hr/> 718,800 lbs. |

B.

- (1) Railroad rates -

Sept. 7, 1955 to Oct. 19, 1955 - \$6.275 per 100 lbs. (a)
Oct. 20, 1955 to Oct. 24, 1955 - \$5.3015 per 100 lbs. (b)

Sources:

- (a) Section 22 Quotation AAR No. 14-A in connection with TCFB Tariff No. 38-H, I.C.C. No. 1549.
- (b) Section 22 Quotation TEA-ER No. 1706-A, EC-WTA No. 76, SFA No. A-1397, in connection with TCFB Tariff No. 38-H, I.C.C. No. 1549.

Routes:

- (a) Pennsylvania R.R. to Chicago; various connection to Omaha; Union Pacific R.R. to Umatilla.
- (b) Baltimore & Ohio R. R. to Chicago; various connections to Omaha; Union Pacific R.R. to Umatilla.

[Note: Tariff rate upon which Section 22 Quotation is based applies only if Union Pacific given long haul from Missouri River to destination.]

- (2) Rail revenues from freight transported by Riss & Co. -
- (a) Sept. 7, 1955 to Oct. 19, 1955 -
601,020 lbs. at \$6.2675/100 lbs - \$37,668.93

Division of total freight charge:

Pennsylvania to Chicago (1/2 of total tonnage):

300,510 lbs.; 13% of revenue - \$2,448.48

B. & O. to Chicago (1/2 of total tonnage):

300,510 lbs.; 13% of revenue - \$2,448.48

Vs. rail carriers, Chicago to Omaha (total tonnage):

600,020 lbs.; 14.4% of revenue - \$5,424.33

Union Pacific, Omaha to Umatilla (total tonnage):

600,020 lbs.; 72.6% of revenue - \$27,347.64

\$37,668.93

(b) Oct. 20, 1955 to Oct. 24, 1955 -

117,780 lbs. at \$5.0315/100 lbs. - \$6,246.41

Division of total freight charge:

Pennsylvania to Chicago (1/2 total tonnage):

58,890 lbs.; 13% of revenue - 406.00

B. & O. to Chicago (1/2 total tonnage):

58,890 lbs.; 13% of revenue - 406.00

Vs. rail carriers, Chicago to Omaha (total tonnage):

117,780 lbs.; 14.4% of revenue - \$ 899.44

Union Pacific, Omaha to Umatilla (total tonnage):

117,780 lbs.; 72.6% of revenue - \$4,534.67

\$6,246.11

[Note: The foregoing divisions of rail revenues are based upon standard railroad agreements or orders.]

(c) Total Pennsylvania revenue \$ 2,854.48

Total Union Pacific revenue 31,882.31

\$34,736.79

C.

	<u>PRR</u>	<u>Union Pacific</u>
Revenue attributable to Riss move- ments	\$2,854.48	\$31,882.31
Minimum revenue attributable to non-Riss movements (via Falls Cities)	<u>2,854.48</u>	<u>31,882.31</u>
Total	\$5,708.96	\$63,764.62
Net profit (at 50%)	\$2,854.48	\$31,882.31
Treble damages	\$8,563.44	\$95.649.93

EXHIBIT II

Umatilla Ordnance Depot, Oregon to Sunflower
Ordnance Depot, Kansas

A.

- (1) Motor carrier rate - 463 cents per hundred pounds.

Source - Rocky Mountain Motor Tariff Bureau Quotation No. 43-C,
Item 600, Route 177.

Participating carriers and routes -

- (a) Consolidated Freightways, Inc. to Billings, Mont.;
Buckingham Transportation, Inc. to Denver; Riss & Co.,
Inc. to Sunflower.
 - (b) Consolidated to Billings; Buckingham to Denver or Omaha;
Watson Bros. Transportation Co., Inc. to Sunflower.
 - (c) Consolidated to Minneapolis; Watson to Sunflower.
 - (d) Sites Silver Wheel Freightlines, Inc. to Pendleton, Oregon;
Garrett Freightlines, Inc. to Salt Lake City; Ashworth Transfer,
Inc. to Denver; Riss to Sunflower.
 - (e) Sites to Pendleton; Garrett to Salt Lake City; Gallagher
Freight Lines, Inc. to Denver; Watson to Sunflower.
 - (f) Sites to Pendleton; Garrett to Salt Lake City; Ringsby
Truck Lines, Inc. and Goldstein Refrigerator Line to Denver;
Watson to Sunflower.
- (2) Freight transported by Riss & Co. (from Revised Schedule "B"):

Nov. 4, 1954 to Dec. 3, 1954 - 740,000 lbs.

B.

- (1) Railroad rate - \$4.807 per hundred pounds.

Source - Section 22 Quotation AAR No. 14-A in connection with
TCFB Tariff No. 38-H, I.C.C. No. 1549.

Routes -

(a) Union Pacific R. R. direct.

(b) Union Pacific to Kansas City; Kansas City & Kaw Valley Ry. */
to Sunflower.

(2) Rail revenues from traffic carried by Riss & Co. -

740,000 lbs. at \$4.807/100 lbs. - \$35,571.80

Division of total freight charge:

Union Pacific direct (1/2 total tonnage):

370,000 lbs.; 100% of revenue - \$17,785.90

Union Pacific, Umatilla to Kansas City;
(1/2 total tonnage):

370,000 lbs.; 91% of revenue - \$15,184.17

K. C. & K. V., Kansas City to Sunflower
(1/2 total tonnage):

370,000 lbs.; 9% of revenue - \$ 1,600.73

\$35,571.80

[Note: The foregoing divisions of rail revenue
are based upon standard railroad agree-
ments or orders.]

Total Union Pacific Revenue: \$32,970.07

C.

Revenue attributable to Riss movements \$32,970.07

Minimum revenue attributable to non-Riss
Movements (via Watson)

32,970.07

Total \$65,940.14

Net profit (at 50%) \$32,970.07

Treble damages \$98,010.21

*Not a party to the litigation.

[HEADING OMITTED]

Civil Action No. 4056-54

[Filed October 6, 1959]

ORDER

Defendants (7) (11) (12) (15) (20) (29) (35) (58) (59) (63) (64) (66) (68) (77) (81) (82) (83) (84) (85) (86) (88) having filed objections to one or more of the following identified Interrogatories served by Plaintiff on June 26, 1959: Interrogatories A 1-4, inclusive, B 1 and 2, C 1-4, inclusive, D 5(b), D 6, and E 4; the Court having heard oral argument on the said objections, and having fully considered the aforesaid objections and arguments and its prior decision herein reported at 23 F.R.D. 211, it is by the Court, this 5th day of October, 1959,

ORDERED, That defendants' objections to Interrogatories A 1-4, and B 1 and 2, served by plaintiff on June 26, 1959, be, and they are hereby, sustained, and

IT IS FURTHER ORDERED, That the Court will withhold ruling on the objections of defendants (11) (12) (29) and (66) to Interrogatories C1-C4, inclusive, pending disposition by the Court of Plaintiff's Motion for Judgment on the Pleadings Dismissing Counterclaims of Defendants, filed June 26, 1959;

AND IT IS FURTHER ORDERED, That the objections of defendant (66) to Interrogatory No. D 5(b) be, and they hereby are, overruled, and the said defendant is ordered to report to Plaintiff, on or before September 15, 1959, if any reason appears why its answer to the said Interrogatory can not be provided to Plaintiff on or before November 1, 1959;

AND IT IS FURTHER ORDERED, That, pursuant to stipulation entered into in open Court on August 13, 1959, by and between counsel for Plaintiff and counsel for defendants (7) (11) (12) (15) (20) (29) (35) (58) (59) (63) (64) (66) (68) (77) (81) (82) (83) (84) (85) (86) (88), each of the said defendants will provide Plaintiff with the following information on or before September 15, 1959:

1. A statement for each year 1949 - 1957, of the total tonnage of ammunition and explosives handled by it for the account of the United States Government, and the total revenue received from transportation of ammunition and explosives for the United States Government; or, in lieu of such statement, a statement showing the Commodity Group No. 631 "Ammunition and Explosives" contained in the Annual Reports filed with the Interstate Commerce Commission for the years 1949 - 1957, inclusive, together with a sworn statement, if possible, by an officer, of his best estimate of the percentage, or proportion, of such tonnage and revenue which was derived from transportation for the United States; and

2. A statement by each such defendant for each year, 1949 - 1957, of all data responsive to Plaintiff's Interrogatories B 1 and B 2, which can be furnished without undue burden on such defendant.

/s/ John J. Sirica

United States District Judge

Seen:

/s/ Paul F. McArdle

Attorney for Defendants (7) (11)

(12) (15) (20) (29) (35) (58) (59)

(63) (64) (66) (68) (77) (81) (82)

(83) (84) (85) (86) (88) for purposes
of this order

(HEADING OMITTED) Civil Action No. 4056-54 Filed October 27, 1959

**ORDER DISMISSING ACTION AND COMPLAINT AS TO CERTAIN
DEFENDANTS AND DISMISSING COUNTERCLAIMS
FILED BY SOME OF SUCH DEFENDANTS**

This matter coming on to be heard this day in open court at a pre-trial conference in this case; and it appearing that all parties are present by their respective counsel of record; and counsel for the plaintiff and counsel for each of the defendants hereinafter named having consented in open court and on the record to the entry of this order of dismissal and there being no objections; and this Court being fully advised in the premises;

IT IS ORDERED that this action and plaintiff's complaint therein, as supplemented and amended, be, and they hereby are, dismissed with prejudice as to the following defendants, without the allowance of any costs to, or in favor of, plaintiff or any of such defendants:

- (9) Gulf, Colorado & Santa Fe Railway Company
- (10) Panhandle & Santa Fe Railway Company
- (14) Central Vermont Railway, Inc.
- (17) The Colorado and Southern Railway Company
- (18) Fort Worth and Denver Railway Company
- (19) Chicago Great Western Railway Company
- (20) Monon Railroad
- (26) The Denver & Rio Grande Western Railroad Company
- (27) Duluth, South Shore and Atlantic Railroad Company
- (30) Grand Trunk Western Railroad Company
- (32) Gulf, Mobile & Ohio Railroad Company
- (35) Louisville & Nashville Railroad Company
- (36) Midland Valley Railroad Company
- (37) Kansas, Oklahoma & Gulf Railway Company
- (38) Oklahoma City-Ada-Atoka Railway Company, Inc.

- (39) The Minneapolis & St. Louis Railway Company
- (59) The Pittsburgh & Lake Erie Railroad Company
- (64) Norfolk and Western Railway Company
- (68) Reading Company
- (71) St. Louis Southwestern Railway Lines
- (73) Texas and New Orleans Railroad
- (74) The Texas and Pacific Railway Company
- (77) The Virginian Railway Company
- (79) The Western Pacific Railroad Company
- (82) The Cincinnati, New Orleans & Texas Pacific Railway Company
- (83) Georgia Southern & Florida Railway Company
- (84) The Alabama Great Southern Railroad Company
- (85) New Orleans & Northeastern Railroad Company
- (86) Carolina and Northwestern Railway Company
- (87) Chicago & Eastern Illinois Railroad Company
- (90) Quanah Acme & Pacific Railway Company

IT IS FURTHER ORDERED that each and every counterclaim filed in this action against Riss & Company, Inc., plaintiff herein, by the following defendants:

- (9) Gulf, Colorado & Santa Fe Railway Company
- (10) Panhandle & Santa Fe Railway Company
- (17) The Colorado and Southern Railway Company
- (18) Fort Worth and Denver Railway Company
- (19) Chicago Great Western Railway Company
- (26) The Denver & Rio Grande Western Railroad Company
- (27) Duluth, South Shore and Atlantic Railroad Company
- (32) Gulf, Mobile & Ohio Railroad Company
- (36) Midland Valley Railroad Company
- (37) Kansas, Oklahoma & Gulf Railway Company
- (38) Oklahoma City-Ada-Atoka Railway Company, Inc.
- (39) The Minneapolis & St. Louis Railway Company

- (71) St. Louis Southwestern Railway Lines
- (73) Texas and New Orleans Railroad
- (74) The Texas and Pacific Railway Company
- (79) The Western Pacific Railroad Company
- (87) Chicago & Eastern Illinois Railroad Company
- (90) Quanah Acme & Pacific Railway Company

be, and it hereby is, dismissed with prejudice, without the allowance of any costs to, or in favor of, plaintiff or any of such defendants.

ENTER:

/s/ John J. Sirica

United States District Judge

October 27, 1959

AGREEMENT [Filed November 23, 1959]

In consideration of the payment of Fifteen Thousand Dollars (\$15,000.00) by defendant (12) Boston and Maine Railroad, receipt of which is hereby acknowledged, and of the dismissal with prejudice by defendant (12) Boston and Maine Railroad of its counterclaims against Plaintiff Riss & Company, Inc. in Civil Action No. 4056-54 in the United States District Court for the District of Columbia (Riss & Company, Inc. v. Association of American Railroads, et al.), which dismissal has been entered, the Plaintiff agrees to dismiss with prejudice its complaint in said Civil Action No. 4056-54 against defendant (12) Boston and Maine Railroad; and the Plaintiff Riss & Company, Inc. further agrees to indemnify said defendant (12) Boston and Maine Railroad against such payments as said defendant may be compelled to make by virtue of its membership in the Association of American Railroads, Eastern Railroads Presidents Conference, or Traffic Executive Association - Eastern Railroads, as a consequence of a settlement by the Plaintiff with, or of any judgment rendered against, those defendants in said Civil Action No. 4056-54.

The Plaintiff Riss & Company, Inc. further agrees not to prosecute against defendant (12) Boston and Maine Railroad, its officers or directors, any cause of action which may arise or have arisen out of acts complained of in said Civil Action No. 4056-54, but it is further understood and agreed that this settlement is not a release of the liability, if any, of said defendant (12) Boston and Maine Railroad for acts which are the subject of the complaint in said Civil Action No. 4056-54; that the Plaintiff may proceed to trial and judgment against the other defendants in said Civil Action No. 4056-54, and that no other defendant may plead this agreement as a bar to the liability asserted in said Civil Action No. 4056-54 against it.

The agreement aforesaid made and entered into this 23rd
day of November, 1959.

RISS & COMPANY, INC., Plaintiff

Attest:

s/ S. W. Bell
Secretary

By s/ Richard R. Riss
Richard R. Riss, President

BOSTON AND MAINE RAILROAD,
Defendant

s/ Maynard W. Bullis
Clerk

By s/ Neal Holland
General Counsel

AGREEMENT

[Filed November 23, 1959]

In consideration of the payment of Fifteen Thousand Dollars (\$15,000.00) by defendant (63) The New York, New Haven and Hartford Railroad Company, receipt of which is hereby acknowledged, the Plaintiff Riss & Company, Inc. agrees to dismiss with prejudice its complaint in Civil Action No. 4056-54 in the United States District Court for the District of Columbia (Riss & Company, Inc. v. Association of American Railroads, et al.) against said defendant; and the Plaintiff Riss & Company, Inc. further agrees to indemnify said defendant (63) The New York, New Haven and Hartford Railroad Company against such payments as said defendant may be compelled to make by virtue of its membership in the Association of American Railroads, Eastern Railroads Presidents Conference, or Traffic Executive Association - Eastern Railroads, as a consequence of a settlement by the Plaintiff with, or of any judgment rendered against, those defendants in said Civil Action No. 4056-54.

The Plaintiff Riss & Company, Inc. further agrees not to prosecute against defendant (63) The New York, New Haven and Hartford Railroad Company, its officers or directors, any cause of action which may arise or have arisen out of acts complained of in said Civil Action No. 4056-54, but it is further understood and agreed that this settlement is not a release of the liability, if any, of said defendant (63) The New York, New Haven and Hartford Railroad Company for acts which are the subject of the complaint in said Civil Action No. 4056-54; that the Plaintiff may proceed to trial and judgment against the other defendants in said Civil Action No. 4056-54, and that no other defendant may plead this agreement as a bar to the liability asserted in said Civil Action No. 4056-54 against it.

The agreement aforesaid made and entered into this 23rd

day of November, 1959.

RISS & COMPANY, INC., Plaintiff

Attest:

s/ S. W. Bell

Secretary

By s/ Richard R. Riss

Richard R. Riss, President

THE NEW YORK, NEW HAVEN AND
HARTFORD RAILROAD COMPANY

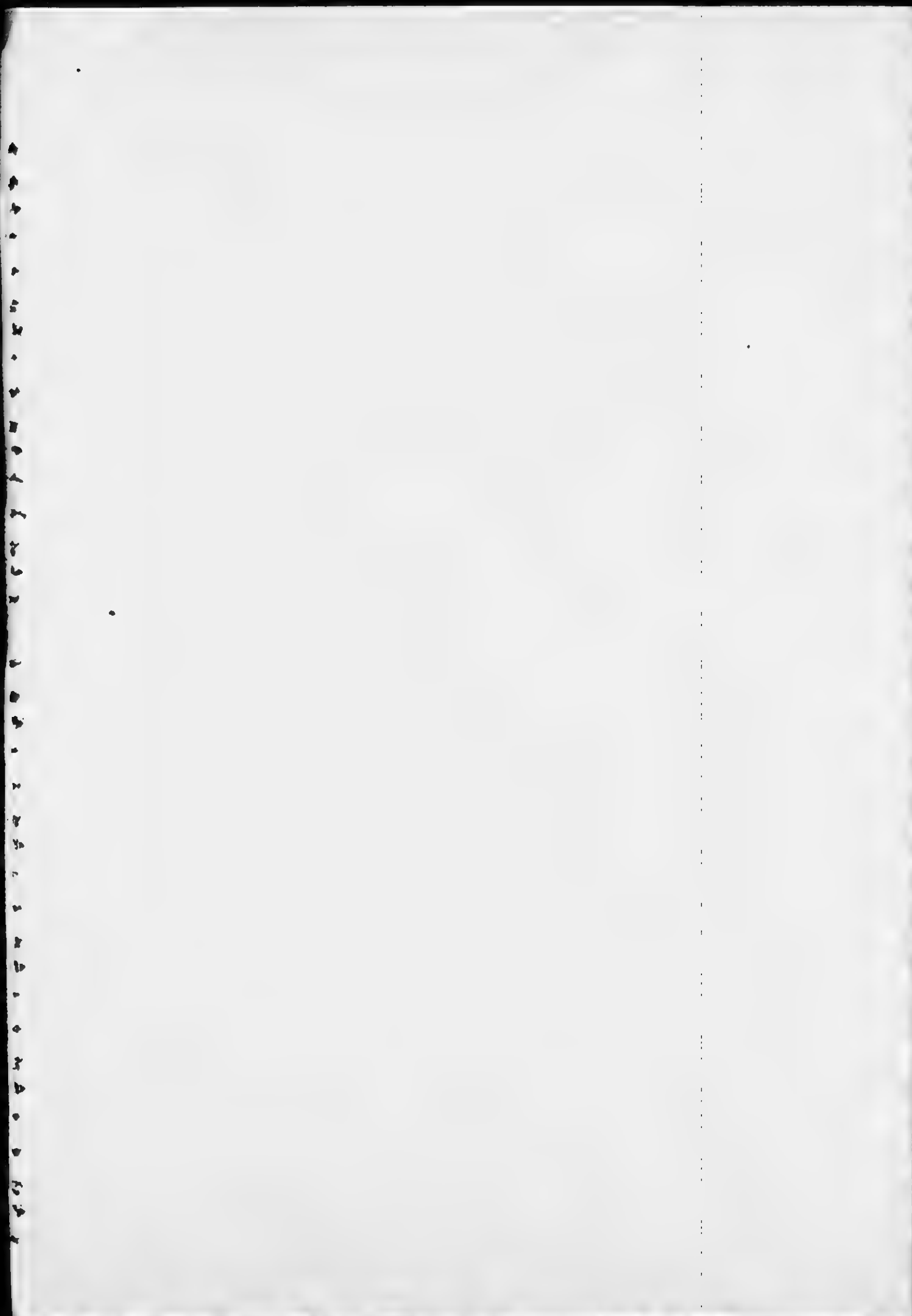
Attest:

s/ J. F. Larkin

Secretary

By s/ E. J. Moore

Vice President - Law



JOINT APPENDIX
VOLUME II

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Nos. 16,206, 16,255, 16,376

THE ASSOCIATION OF WESTERN RAILWAYS,
TRAFFIC EXECUTIVE ASSOCIATION-EASTERN
RAILROADS, EASTERN RAILROAD PRESIDENTS
CONFERENCE, et al.,

Appellants,

v.

RISS & COMPANY, INC.,

Appellee.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY
COMPANY; CHICAGO, BURLINGTON & QUINCY
RAILROAD COMPANY; CHICAGO, MILWAUKEE,
ST. PAUL & PACIFIC RAILROAD COMPANY, et al.,

Appellants,

v.

RISS & COMPANY, INC.,

Appellee.

Nos. 16,206

and 16,376

No. 16,255

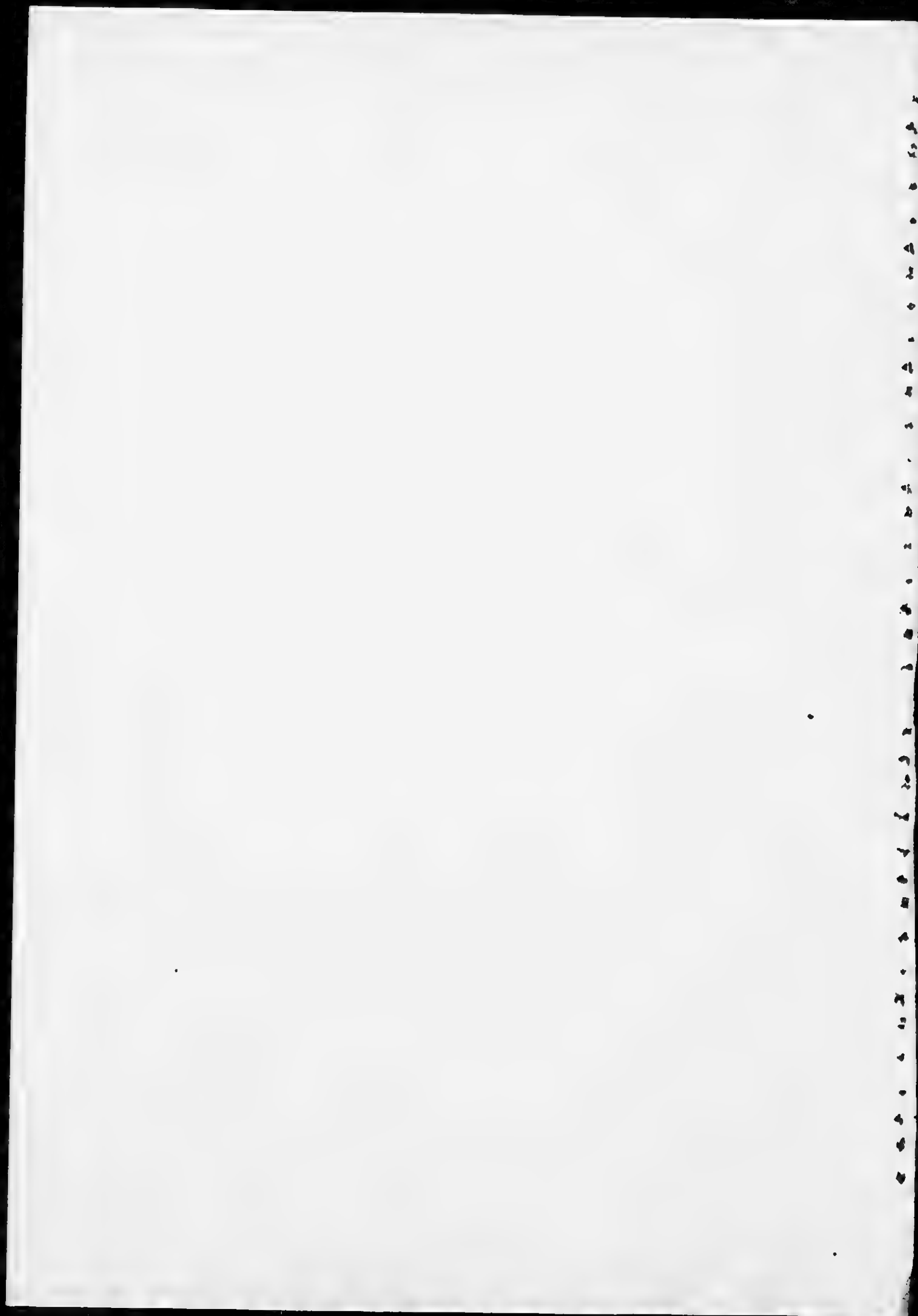
Appeal from a Judgment of the
United States District Court for the District of Columbia

CONTENTS

Pages 357 to 636

United States Court of Appeals
For the
District of Columbia

FILED OCT 16 1961
Joseph W. Stewart
CLERK



INDEX

VOLUME II

	<u>Page</u>
Order Dismissing Action and Complaint as to Defendants Boston & Maine Railroad and the New York, New Haven and Hartford Railroad Company and Dismissing the Counterclaim filed by the Boston & Maine Railroad, entered November 24, 1959	357
Counterclaimants' Statements with Respect to Liability under Count II of their Counterclaims, filed November 30, 1959	359
Motion of Southern Defendants for Summary Judgment filed December 31, 1959	415
Affidavit of Richard T. Conway	415
Motion for Leave to Supplement the Answers of Certain Defendants, filed December 31, 1959	417
Plaintiff's Reply to Motions of Certain Defendants for Summary Judgment and to Supplement Their Answers, filed January 8, 1960	420
Memorandum of Objections with Respect to Plaintiff's Chart entitled "Riss Explosives Shipments as Shown in Revised Schedule B, Defendant Railroads' Explosives Shipments Shown in their Interrogatory Answers, and I. C. C. Reports", filed March 29, 1960	421
Motion of ERPC to Dismiss or for a Directed Verdict, filed May 17, 1960	426
Motion of PRR to Dismiss or for Directed Verdict, filed May 17, 1960	427
Motion of all Defendants to Dismiss or for Directed Verdict, filed May 17, 1960	427
Motion of Byoir for Directed Verdict or Dismissal, filed May 17, 1960	429
Motion of TEA for a Directed Verdict and for Dismissal of the Complaint, filed May 19, 1960	430
Motion of AWR to Dismiss or for a Directed Verdict filed May 20, 1960	430
Order Denying Motions to Dismiss or for Directed Verdict made by Defendants at the Close of Plaintiff's Case, and Allowing Exhibits Introduced by Plaintiff to be Received in Evidence Against all Defendants, entered June 28, 1960	431

	<u>Page</u>
Plaintiff's Proposed Instructions to the Jury [Excerpts], filed July 20, 1960	432
Opinion Granting Summary Judgment in Favor of Plaintiff on Certain Counterclaims of Defendants (8), (16), (21), (22), (23), (33), (40), (41), (70), (76) and (78), entered August 9, 1960	434
Order for Conference on Certain Matters and for Pre-Trial Conference on Antitrust Counterclaims of Certain Defendants, entered August 25, 1960	438
Revised Memorandum of Counterclaimants with Respect to Count II of their Counterclaims served September 2, 1960, filed February 8, 1961	439
Memorandum of Counterclaimants with Regard to Paragraph II of the Court's Order of August 25, 1960, filed September 12, 1960	631

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RISS & COMPANY, INC.,

Plaintiff,

V.

ASSOCIATION OF AMERICAN
RAILROADS, ET AL.,

Defendants.

Civil Action No. 4056-54

Filed November 24, 1959

ORDER DISMISSING ADCTION AND COMPLAINT AS TO DEFENDANTS (12)
BOSTON AND MAINE RAILROAD AND (63) THE NEW YORK, NEW
HAVEN AND HARTFORD RAILROAD COMPANY AND DISMISS-
ING THE COUNTERCLAIM FILED BY DEFENDANT
(12) BOSTON AND MAINE RAILROAD

This matter coming on to be heard this 23rd day of November, 1959, upon agreement between counsel of record for plaintiff and counsel of record for defendants (12) Boston and Maine Railroad and (63) The New York, New Haven and Hartford Railroad Company; and counsel for these said parties having stipulated and consented to the entry of this order of dismissal; and the Court being fully advised in the premises:

IT IS HEREBY ORDERED that this action and plaintiff's complaint herein, as supplemented and amended, be, and the same hereby are, dismissed with prejudice as to defendant (12) Boston and Maine Railroad and defendant (63) The New York, New Haven and Hartford Railroad Company, without the allowance of any costs to or in favor of plaintiff or either of said defendants.

IT IS FURTHER ORDERED that the counterclaim filed in this action against Riss & Company, Inc., plaintiff herein, by defendant (12) Boston and Maine Railroad be, and it hereby is, dismissed with prejudice, without the allowance of any costs to, or in favor of, plaintiff or said defendant.

/s/ John J. Sirica
United States District Judge

Consented to:

/s/ A. Alvis Layne
A. Alvis Layne,
Attorney for Plaintiff

/s/ John D. Lane
John D. Lane

/s/ Fred S. Gilbert, Jr.
Fred S. Gilbert, Jr.
Attorneys for Defendants
(12) Boston and Maine Railroad and
(63) The New York, New Haven and
Hartford Railroad Company

UNITED STATES DISTRICT COURT [Filed Nov. 30, 1959]
FOR THE DISTRICT OF COLUMBIA

RISS & COMPANY, INC.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Civil Action No. 4056-54
	)	
ASSOCIATION OF AMERICAN	)	
RAILROADS et al.,	)	
	)	
Defendants.	)	

COUNTERCLAIMANTS' STATEMENTS WITH RESPECT
TO LIABILITY UNDER COUNT II OF THEIR COUNTER-
CLAIMS

PREFACE

The factual materials outlined herein have been derived solely from documents produced by the plaintiff from its files in response to a motion for production of documents. The volume of material produced by the plaintiff in response to that motion was such that counterclaimants have not yet completed their detailed analysis of these documents.

It should be noted that the preliminary review of the plaintiff's documents took the full time of a staff of from two to four lawyers over a period of approximately six weeks and resulted in the copying of 99,520 documents which fill six four-drawer file cabinets. The mechanical process of cutting and sorting a single set of these documents has occupied the full time of from two to four clerks working under the supervision of a lawyer for the past nine months. It is apparent that this has left little time for analysis. Furthermore, much of the

documentary material is technical rate data which requires analysis by persons trained in the field of motor carrier rates. Counterclaimants were unable to secure the services of such a person until October, 1959, and his work has barely begun.

However, even the limited study of these documents which it has been possible to complete as of this time clearly discloses that Riss & Company and virtually every other motor common carrier of any consequence, particularly those transporting ammunition and explosives, combined and conspired to fix motor carrier Section 22 rates at a uniform level designed to divert traffic from the railroads. Furthermore while the existence of this conspiracy is indisputable on the basis of the evidence at hand, it should be noted that counterclaimants have not yet had an opportunity to carry out the further discovery necessary to complement their documentary analysis.

I

ILLEGALITY OF THE ESTABLISHMENT OF UNIFORM
SECTION 22 RATES BY COMPETING MOTOR CARRIERS

In considering the facts to be set forth in this memorandum, counterclaimants believe that the Court should have the following points in mind:

1. The Court of Appeals for this Circuit has recently declared that joint action among competing common carriers to establish uniform Section 22 rates is price-fixing among competitors and as such illegal per se under the Sherman Act, unless such carriers are relieved from the operation of the anti-trust laws by virtue of Section 5a(9) of the Interstate Commerce Act (49 U.S.C. § 5b(9)). Atchison, Topeka and Santa Fe Railway Co. v. Aircoach Transport Association, Inc., 253 F.2d 877 (C.A.D.C., 1958).

2. During most of the period relevant herein, the motor carrier rate bureaus had not secured I.C.C. approval of their Section 5a agreements, and not a single motor carrier rate bureau which has at any time secured Commission approval of its agreement pursuant to Section 5a of the Interstate Commerce Act has included in such agreement joint procedures for the establishment

of Section 22 rates. Accordingly, no action taken by these bureaus with respect to Section 22 rates is protected by Section 5a(9).

3. The counterclaim defendant, Riss & Company, has for many years been well aware of the illegality of such joint action, absent Section 5a approval.

4. Riss has conceded that none of the Section 22 rates for the transportation of explosives in which it has participated were established in conformity with any approved Section 5a agreement.

A. Motor Carrier Rate Bureaus

Riss was a member of several motor carrier rate bureaus during all or part of the period 1947 through 1958, and participated in some tariffs issued by others. Each of these rate bureaus eventually secured Commission approval of a Section 5a agreement, but during most of that part of this period after enactment of Section 5a in 1948 they had not secured such approval.

The following table shows the dates upon which the more important bureaus secured Section 5a approval:

<u>Bureau</u>	<u>Sec. 5a App.</u>	<u>Effective date of Approval</u>
Middle Atlantic Conference	No. 23	12-6-54
Southwestern Motor Freight Bureau, Inc.	No. 18	8-22-55
Eastern Central Motor Carriers Association, Inc.	No. 48	2-16-56
Central & Southern Motor * Freight Tariff Ass'n., Inc.	No. 49	10-8-56
Southern Motor Carriers Rate Conference *	No. 46	11-5-56
Central States Motor Common Carriers	No. 33	7-19-57
Middlewest Motor Freight Bureau **	No. 34	10-29-57
Rocky Mountain Motor Tariff Bureau, Inc.	No. 60	6-30-58

* Riss was a non-member participant in certain tariffs.

** Riss withdrew on 7-22-57.

It is thus apparent that, even if these agreements had covered the establishment of Section 22 rates, they could offer no protection for such activity since they were not in effect during much of the period with which the Court is here concerned.

It is also apparent that if the procedures of these bureaus applied to Section 22 rates, the procedures were not followed.

In response to interrogatories propounded by the Western railroad defendants in July, 1958, Riss stated that although it was a participant in the publication of Section 22 rates on explosives by the Middle Atlantic Conference, Middlewest Motor Freight Bureau, Rocky Mountain Motor Tariff Bureau, and Southwestern Motor Freight Bureau, it did not contend that any of its Section 22 explosives rates were published pursuant to the procedures established in any approved Section 5a agreement (Ans. to Int. Nos. I-14, 16).

It is equally clear that these agreements, before or after approval, did not cover Section 22 rates.

On May 28, 1951, M. P. Hester, Vice-President of Riss, wrote to E. L. Forbell, General Traffic Manager of Chicago Express, with copies to B. M. Pierce of Mid-State Freight Lines, J. A. Maguire of Liberty Motor Freight Lines, H. H. Moore of Long Transportation Co., and C. W. Hicks of Eastern Motor Express, Inc., pointing out that ". . . Section 22 Quotations are not covered by the applications of the various bureaus under Section 5-A. . . ."

On September 2, 1952, Mr. Hester wrote to Calvin Rhodebeck, also a Riss Vice-President, advising him that the Middle Atlantic Conference had filed a Section 5a application "for the purpose of discussing rates on Government tenders" and that the Middlewest Motor Freight Bureau had prepared such an application which was to be discussed at its next Board of Directors meeting. The Middle Atlantic agreement -- Middle Atlantic Territory - Section 22 Agreement, Section 5a Application No. 41 -- was withdrawn by the applicants on March 27, 1953, and the proposed Middlewest agreement was never filed.

On May 18, 1953. C. L. Lawson, Assistant General Manager, Central States Motor Freight Bureau, Inc., wrote to Riss, stating, "Our present by-laws do not provide for the publication of Section 22 quotations . . ." and that the Bureau's attorneys had advised it not to make any such quotations.

As late as July 1, 1957, James K. Newbold, Riss Vice-President and Director of Traffic, wrote to Peter Badarek, Traffic Manager, Kramer Bros. Freight Lines, that

"As you undoubtedly know, there is no provision in the [Eastern Central Motor Carriers Association, Inc. agreement] . . . providing protection for us on joint publication of Section 22 Quotations, or on joint negotiations with the Government."

B. Riss's Knowledge That Joint Establishment or Negotiation of Section 22 Rates Was Illegal Absent Section 5a Approval

In May, 1951, M. P. Hester, Riss Vice-President, was invited to participate in a meeting of competing carriers to agree upon a Section 22 rate for general freight shipped by the Navy between Great Lakes, Illinois, and certain Eastern points. On May 28, 1951, he wrote to E. L. Forbell, General Traffic Manager, Chicago Express, stating,

"In view of the activities of the Department of Justice and the fact that Section 22 Quotations are not covered by the applications of the various bureaus under Section 5A, I want no part of any such meeting; therefore we will not be represented." *

In November, 1955, the Munitions Carriers Conference called a meeting of its Board of Directors to discuss the action to be taken in response to the railroads' October 20, 1955, rate reduction on Government explosives traffic. James Reardon of Riss wrote Walter Burns of the Munitions Carriers Conference that,

* As will be shown later, this pious statement did not prevent Mr. Hester from agreeing with Mr. Forbell and his other competitors on these rates.

"Riss and Company will not participate in any plan or activity which will result in an agreement with members of the Munitions Carriers Conference as to the level of rates that will be quoted to the United States Government, covering the transportation of explosives and dangerous traffic. We believe that the matter of the level of rates at which we can profitably handle this type of traffic is a matter for Riss & Company to decide independently, based upon Riss cost figures. We have been advised by counsel that any other course of action is unlawful." *

In June of 1957, Peter Badarek, Traffic Manager, Kramer Freight Lines, wrote to seventeen motor carriers, members of the Eastern Central Motor Carriers Association, including Riss, appointing a committee to negotiate with the Government Printing Office and Post Office Department for higher Section 22 rates for traffic for which these carriers competed. James Newbold of Riss was appointed to the committee.

Mr. Newbold, on July 1, 1957, wrote to Mr. Badarek, pointing out that the Eastern Central Motor Carriers Association had no provision in its Section 5a application protecting the members with respect to joint publication of Section 22 rates or joint negotiations with the Government. Newbold declined to serve on the committee, stating:

"It would, therefore, appear that the formation of a special committee to negotiate jointly with the two departments you mention is in direct violation of the Antitrust Laws, and could subject us to prosecution and substantial fines." **

Counterclaimants believe that the Court can gain a better perspective of Riss' conduct with regard to Section 22 rate quotations if it views this

* Again, as will be shown, Riss' conduct was not in accord with this statement.

** Mr. Newbold's alternative suggestion, which was finally adopted, was that instead of openly negotiating with the government agencies, the competing carriers get together at the meeting of the General Rate Committee of the Eastern Central Motor Carriers Association, held during the week of July 15, 1957, and discuss the problems of raising their rates "informally."

conduct in the light of Riss' knowledge that the motor carrier rate bureaus had no authority to deal with the joint establishment of Section 22 quotations and its knowledge that such price-fixing was "illegal."

II.

THE SCOPE OF THE CONSPIRACY

Counterclaimants allege, and intend to prove, that:

1. Riss and other motor carriers combined, conspired, and agreed to establish uniform rates on all government traffic moving by motor carrier under Section 22 rates.
2. With respect to government traffic for which motor carriers competed with railroads, Riss and its co-conspirators agreed to establish rates at or below the prevailing rail level for the purpose of diverting such traffic from rail carriers to motor carriers.
3. With respect to government traffic for which motor carriers did not compete with railroads, Riss and its co-conspirators agreed to eliminate price competition among themselves and to maximize their revenues to enable them to continue reductions on competitive traffic.

While the major portion of counterclaimants' proof, particularly with respect to damages, will relate to ammunition and explosives traffic because of the availability of data relating to that traffic, reference will be made to other commodities for the purpose of establishing the nature and scope of the conspiracy.

III.

THE ORIGIN OF THE CONSPIRACY

Counterclaimants do not know precisely when the conspiracy charged originated, although they believe that it was during or shortly after World War II. Motor carrier rate bureaus began publishing "government rate sheets" during World War II. The conspiracy was extended to include ammunition and explosives traffic not later than 1947, although its full impact was not felt until

the period of the Korean War when the increased volume of government shipments provided incentive for its expansion.

During the period of actual hostilities in World War II (December, 1941, to August, 1945), the railroads transported more than 90% of all commodities shipped by the War Department, while motor carriers transported about 8.2%. War Materials Reparations Cases, 294 I.C.C. 5, 8.

While motor carriers had regularly transported some explosives prior to and during World War II, they were not a significant factor. The generally prevailing motor carrier rate on government ammunition and explosives shipments prior to 1947 was about 75% of the motor carrier first class rate. The motor carrier first class rate itself was quite high since it was based on a truckload minimum weight of only 2,000 pounds. The bulk of the motor carrier transportation of explosives was in less-than-truckload quantities, and many motor carriers believed that this was the most profitable traffic.

Riss was, as it alleges, a pioneer of sorts in explosives transportation, in that it was one of the first motor carriers to recognize that there were substantial profits to be made by motor carriers if they could participate in the mass movements of explosives which had been handled exclusively by rail.

In August, 1946, Calvin Rhodebeck recommended the issuance of a blanket Section 22 quotation similar to AAR Section 22 Quotation No. 14-A on Ammunition, Explosives, Ordnance, etc., which had been in effect since 1942. Riss issued its U. S. Government Quotation No. 91, effective September 23, 1946, applicable to all single-line movements over Riss. The rates specified were 75% of the first class rates in Motor Carrier Bureau Tariffs to which Riss was a party for 20,000 pounds minimum, and 65% of those rates for 50,000 pounds minimum weight. The tariff rates were "subject to current railroad first class rates as maxima." This quotation was renewed on January 1, 1947, as No. 98 and No. 98 (Amended).

Supplement 1, to No. 98, specified movements from Sunflower Ordnance Works, Eudora, Kansas, to Camp Stanley, Texas, at the same rates.

In early 1947, Riss was more concerned with inert government freight. It began investigating the possibilities of that traffic in January, 1947.

On January 16, 1947, Leo R. Hanrahan, a Riss employee, reported to Calvin Rhodebeck, a Riss Vice-President, that Karl Wilson of the Middle Atlantic Conference said that, so far as he knew, no one had filed any special rates under Section 22 in that territory, and that Mr. Baker (an Army employee) said no carrier had filed special rates in Middle Atlantic States territory.

On January 20, Rhodebeck reported to D. C. Stone, Riss Vice-President and Director of Traffic, that the new rates quoted in Waring's Tariffs (which applied in Middle Atlantic territory) would not produce any military traffic since they were higher than rail. Rhodebeck asked that Riss quote these rates less certain area arbitraries, and subject to the provision that special Section 22 quotations would govern.

On January 21, 1947, Rhodebeck wrote Stone that

" . . . the only way we can get any of the Army traffic in Middle Atlantic territory is by . . . [issuing a Section 22 quotation] which puts us on a par generally with rail.
 . . . if we are 1¢ lower we get all the movement [;]
 if on a par with rail it will be split and if we are 1¢ over rail we get none."

The quotation Rhodebeck proposed was issued as Riss U. S. Government Quotation Amended 101.

On February 1, 1947, Rhodebeck again wrote Stone stating that he had informed the Waring bureau of Riss' action because they "clear with the carriers all section 22 quotations they can which are made by other truck lines," and "they thought an atom bomb went off." Waring's suggested Riss use other rates which were 1.76% less than rail class rates, the closest Waring rates to the rail class rates. He closed by stating that

"Waring's office just called and said they were calling a meeting of the carriers at the Governor Clinton Hotel NYC 9:30 a.m. Feb. 11th to discuss government rates, etc. and would I be present. I expect to be there and take their abuse."

There is no indication of the results of this meeting, but on May 16, 1947, Rhodebeck wrote to Stone that he had attended a meeting of Waring's in Washington "at which govt. rates were discussed plenty." The carriers did not then

agree on a general Section 22 quotation for the government on the rail basis, but Rhodebeck stated that the War Department wanted a general quotation, issued through the rate bureau. Rhodebeck noted that "the south" already had such a quotation. He noted that the War Department "appreciates our fight for uniformity."

On June 17, 1947, Rhodebeck suggested that the Middle Atlantic Conference file a proposed amendment to Riss' quotation which exactly met the rail rates. On June 19, 1947, Stone agreed.

On August 21, 1947, Middle Atlantic State Motor Carrier Conference, Inc., published its Government Rate Sheet No. 70, effective August 25, 1947, covering all government traffic in its territory, including ammunition and explosives. Riss and 89 other motor carriers joined in these rates.

The intention of these carriers is made clear by a note from Rhodebeck to Stone dated October 16, 1947, in which Rhodebeck asks that Riss' quotation No. 101 be cancelled, stating:

"As it stands we have 2 quotations in effect and 101 is the lower and very embarrassing when I try to tell the other lines we are on a parity with them in 70 -- they say 'Oh yeah' 'what about 101?'"

IV.

THE GROWTH OF THE CONSPIRACY

1948-1949

During 1948 and 1949, the spirit of cooperation was growing.

On April 5, 1948, Rhodebeck suggested to Stone that he should have a "general informal discussion" of increasing the Section 22 rate to the government on postcards at the Eastern Central rate meeting with Roadway, Schreiber, and other conference carriers. On May 7, 1948, M. P. Hester, Stone's assistant, reported that

"Walter Stiegele of Roadway Express and I had an informal discussion with some of the interested carriers at Cleveland. Walt had talked with Schreiber Company and secured their concurrence."

An undated, unsigned memorandum indicates that several carriers met and agreed not to make quotations below "Column 55, 20,000 lbs." On May 24, Hester informed Rhodebeck that Riss would go along on that basis if the rest would. Other carriers also agreed, but apparently Schreiber would not.

On December 30, 1948, Stone wrote H. R. Harrigan, a Riss employee at Washington, that Riss was increasing its rates 20% on local points on postcards, and eliminating points beyond its line. He stated that Riss expected to lose the business, but added:

"The subject will be handled further and I hope at some time to have these quotations placed in a bureau quotation so that all carriers who may handle the traffic will be on a parity." (emphasis supplied)

On April 2, 1949, Stiegele wrote to Hester, enclosing a copy of a proposed quotation establishing increased rates on post cards. He stated:

"This is the one that was not filed but we are still hopeful can be filed. I contacted Schreiber Trucking and believe they will go along on an increase. Will advise you just as soon as information received of result of meeting to be held soon."

On April 12, 1949, Hester advised Stone:

"The Schreiber Trucking Co. will increase their rates. Walt will inform me of the necessary changes at which time we can correct our quotation No. 10A observing the effective date."

Similarly, on December 12, 1958, L. L. Haney, Traffic Manager of Buckingham, asked Riss to increase their joint quotation on airplane engines from Weaver Air Force Base, Rapid City, S.D., to Tinker Air Force Base, Marion, Oklahoma, by 5% stating that their competitor, Wilson Transportation Co.,

"assured us they, also, will amend their quotation on the above."

Riss' individual activities during this period were largely concentrated on securing additional truck routings on the basis of railroad rates. Effective May 7, 1948, it issued its quotation No. 14-A, jointly with Nelsen & Petersen, Inc., providing a 65% of first class rate volume, minimum 50,000 pounds, on explosives between Ft. Riley, Kansas, and Sioux Ordnance Works, Sidney, Nebraska. Effective August 1, 1948, it issued a quote at the same rate covering all movements between all points served by Riss and all points served by Buckingham, Interstate, Red Ball, and Union Freightways.

Riss attempted to negotiate an identical individual quotation with Central Freight Lines, but on October 10, 1948, its Traffic Manager, George W. Adams, wrote Stone, stating:

"We are thoroughly sold on handling our rate quotations to the Government through Mr. J. D. Hughett (the tariff publishing agent for the Southwestern Motor Tariff Bureau). The benefits in additional tonnage from the Government have been great and we have been advised by the Traffic Control Section of the Army that this method is much preferred as it is more simple to determine the quotations on file. We have no hesitancy in saying Mr. Hughett will see that the tariff will fully protect you regardless of origin or destination. In addition, Mr. Hughett is frequently in contact with these officials so that he is better prepared to keep abreast of their needs and we think that his action in the past has shown that in many instances he was able to determine information which enabled us to avoid filing quotations any lower than absolutely necessary."

This eulogy to Mr. Hughett was probably unnecessary, since Riss was at that time already a participant in his Section 22 quotation Series 1000, and in a uniform 65% rate, 50,000 pound minimum, on ammunition and explosives applicable to all Texas points over the lines of each participant or combination of participants.

In December, 1948, Stone wrote to E. Frank Eardley, Vice-President of Pacific Intermountain Express, J. A. Barton, Traffic

Manager of Hoover, C. P. Kaufman, Traffic Manager of Southeastern, and Fred C. Leibold, Vice-President of Consolidated Freightways, proposing the establishment of the 65% rate, 50,000 pound minimum, for explosives and ordnance between all military points on each line. He later made the same proposal to D. O. Barrett, Traffic Manager, Hayes Freight Lines, Morris, Traffic Manager of Interstate, and A. W. Scales, Vice-President, Brown Express. Stone explained, on March 3, to Leibold and Morris that the proposed rate was profitable on mass movements of explosives even if the back-haul was empty. Riss quotation No. 10, effective March 3, between all Riss and Hayes points resulted from this exchange.

Riss was also issuing quotes on this basis for those points which it could serve direct. For example, effective January 1, 1948, it issued its quotation No. 11(1948), effective for all points it served directly, specifying 65% of the first class motor carrier rates, current rail rates as maxima, on a 50,000 pound minimum for explosives, and 75% of those rates on a 20,000 pound minimum. This quotation was reissued as No. 2, effective January 1, 1949, and as No. 2A, effective July 1, 1949.

The second reissue led to some difficulties with Riss' fellow carriers. On September 20, 1949, C. M. Carter, Assistant General Manager, Middle Atlantic States Motor Carrier Conference, Inc., wrote to Calvin Rhodebeck, noting that Riss was a participant in that bureau's Government Rate Sheet No. 107. Carter pointed out that although that rate sheet had the same rate as Riss' No. 2A for 50,000, it did not have the 20,000 pound rate. Carter protested that this additional rate gave Riss an advantage over its competitors and should be brought up before the bureau's General Rate Committee. He demanded an explanation.

Stone replied to Carter stating that No. 2A was intended to apply over Riss' whole system, and was tendered to the military because at that time most bureaus did not publish Section 22 rates. He noted that the Middlewest bureau had the same rate, but offered to restrict the

application of the Riss rate to territory outside the Middle Atlantic States territory.

On October 18, 1949, Carter answered Stone, stating:

"You will remember that at one time the Section 22 situation on Army traffic was becoming very involved but that through the cooperation of the Army and Middle Atlantic Conference Lines, including our mutual friend, Cal. Rhodebeck, what promised to be a very unfortunate condition was resolved into a very satisfactory one for all concerned. This arrangement has continued as an outstanding example of what can be done and we are frankly reluctant to see any development which might cause it to deteriorate."

Carter suggested that Riss proceed to make its quotation inapplicable in Middle Atlantic States territory.

On November 11, 1949, Stone advised Carter that No. 2-B had been issued providing that the 75% rate would not apply between points for which rates were named in Middle Atlantic tariffs.

Thus, by the end of 1949, the uniform explosives rate, determined by the rail rate, was spreading, and steps were being taken to insure that carriers did not compete on the basis of rates.

1950

Throughout 1950, Riss continued to extend its interline routings with other carriers on ammunition and explosives at a rate based on 65% of the motor carrier first class rate or the rail first class rate, whichever was lower, applicable to a 50,000 pound volume minimum.

In January, 1950, it issued quotations adopting this rate for all movements between all points served by Riss and points served by Herrin (U.S. Govt. Quote No. 72), and by Southern Express (U.S. Govt. Quote No. 82). It also issued a quotation with Southern Express on explosives between Pueblo Ordnance Depot and Camp Stanly, Texas, applying the exact rail rate and minimum weight (U.S. Govt. Quote 73).

Effective February 14, 1950, Riss and Union Freightways adopted

the standard rate for all points they served jointly (U.S. Govt. Quote No. 84). Effective March 14, the rate was made applicable from Tooele, Utah, to all points served by Strickland, via Barton Truck Lines, Interstate, and Riss, and reverse (U.S. Govt. Quote No. 88).

In April, 1950, Riss, Union Freightways, and North East Texas Motor Lines adopted the standard rate for all interline movements between Riss and North East Texas, and between Union and North East Texas via Riss. They also added the 75% rate on a 20,000 pound minimum (U.S. Govt. Quote Nos. 96, 97A). A similar quotation was issued for all Riss and Strickland points, effective May 4, 1950 (U.S. Govt. Quote No. 106).

Riss' policies at this time were clearly spelled out by Hester. Responding to a suggestion from L. L. Lane, a Riss employee at Denver, that Riss could secure additional traffic by reducing its rates, he wrote on February 11, 1950:

"It is our standard policy not to file a rate proposed reducing rates on traffic presently moving via any motor carrier party to bureau tariffs. It is also our standard policy not to establish rates below the rail levels unless forced to do so by individual issue of competing forms of transportation. In other words, we do not solicit traffic on a new rate basis. Where the traffic is presently moving other than by rail, we will establish motor carrier rates on the rail level subject to the maximum minimum weight that can be loaded in the tandem axle trailer." (Emphasis added.)

In addition to refusing to depart from the rates adopted by other motor carriers, Riss also agreed with interline carriers that it would establish the same rates over its routes with those carriers as it established for any competing routes (F. L. Morris, T.M., Interstate to D.C. Stone, 1-4-50).

During this period the rate bureaus were assuming more importance in controlling motor carrier Section 22 rates. On January 31, 1950, Central States Motor Freight Bureau, Inc., informed Riss and other participants that, unless given notice to the contrary before February 20,

it would establish Section 22 rates for all carriers. It noted that it had signed special powers of attorney which it could use to issue government rate sheets.

On March 8, 1950, Stone wrote apologetically to J.D. Lawson, General Manager of the Middlewest Motor Freight Bureau forwarding a copy of Riss Quotation No. 83, issued February 27, which had not been sent to the bureau. Stone stated:

"We are trying to watch these and will see that copies are sent you, when and if issued."

On December 18, 1950, Lawson informed Stone that an amendment to that quotation (No. 83-C) duplicated rates in Item 445, Middlewest Section 22 quotation No. 303-A. Riss promptly issued its quotation 83-D, cancelling 83-C, and referring to 303-A for the rates to be applied.

On October 20, 1950, James Newbold, a Riss employee, reported to Stone and to S.A. Johnson, of Riss, on a meeting of the Middle Atlantic States General Rate Committee held on October 17. He informed them that the Committee decided to retain the requirement that the government furnish a separate bill of lading for each truck, and that all carriers having quotations to the Veterans Administration from the District of Columbia to New York would cancel them. The Committee decided to hold a meeting of conference members and non-members, preferably with the Navy Department, to arrange for the cancellation of all Section 22 quotations based on 1942 railroad rates. Finally, Newbold reported that the Middle Atlantic bureau objected to Riss Quotation No. 50-A because it departed from the 75% rate applicable to minima less than 50,000 pounds.

Effective January 16, 1950, Rocky Mountain Motor Tariff Bureau issued its U.S. Government Quotation No. 25, establishing rates for ammunition and/or poisonous gas for Buckingham, Ringsby, Ross Transfer, and Riss from Black Hills Ordnance, Provo, S.D., to Rocky Mountain Arsenal, Denver, Colo., and Pueblo Ordnance Depot, Avondale,

Colo. By May 5, 1950, it had issued its Quotation No. 38 which provided a uniform rate from Tooele Ordnance Depot, Tooele, Utah, to Defense, Texas, for Riss and eight other motor carriers over twelve different competing routes. This quotation established the pattern for future Rocky Mountain activities.

Rocky Mountain No. 38 departed from the standard rate structure by specifying a minimum weight of 30,000. Effective June 29, 1950, Riss issued its Quotation No. 121, providing a 30,000 pound minimum for ammunition and explosives shipments from Sioux Ordnance Plant in Nebraska to Savanna Ordnance Plant in Illinois,* via Riss and Union. Effective July 7, 1950, Riss, Wells Cargo, Southern California Freight Lines, Northern Transportation Co., Salt Lake Transfer, and Ringsby joined in Riss Quotation No. 153, adopting the 30,000 pound minimum for all interline shipments between their lines.

By August, 1950, Stone was complaining to K. Tracy Power, General Manager, of the Rocky Mountain bureau that Interstate had breached the agreement of the members of the bureau that "all such quotations would be made through your bureau."

Stone continued:

"There appears to be one or two things we can do namely withdraw entirely from the bureau quotations and publish our own with the concurrence of connecting carriers or cooperate with all carriers to the end that the quotations may be on the proper basis and that the rates may be uniform via all competing lines."

E. L. Morris of Interstate, who had received a copy of Stone's letter, replied on August 9, 1950, pointing out that the particular rate

* This quotation affected Middlewest territory, and on June 29, 1951, it was cancelled and the rate for this movement published in Middlewest No. 303-B at the standard 65%, 50,000 pound minimum weight.

complained of was an old one of which Riss had been notified on April 19, 1949. He agreed with Stone that all quotes should be issued by the bureaus, and stated that he had written several carriers issuing quotations showing Interstate as the originating carrier, insisting that they withdraw the quotes and file them through the bureau.

Effective December 9, 1950, the Rocky Mountain Bureau issued its comprehensive Section 22 quotation No. 43-A.

By December, 1950, Stone was writing to H.R. Harrigan, a Riss employee, that Riss was making "very decent profits" on its government business where competition from other motor carriers was under control.

1951

During 1951, Riss continued its existing quotations on the same general terms, varying them only as different standards (e. g. , the use of a 30,000 pound volume minimum, the conversion of percentages into cents per hundred pounds) came into general acceptance in the various regions in which it operated.

It began cancelling many of its individual quotations and transferring them to bureau quotations. Thus, Item 105, Route 59, of Rocky Mountain 43-A replaced the Riss and Interstate Quotation No. 15-B-51, and Riss and Southern Express agreed to cancel Quotation No. 73 and "join the other carriers in the items published in [Middlewest] Tariff 303-B, covering these movements." On March 30, 1951, Hester informed Riss employees that "Rocky Mountain U.S. Government Quotation No. 43-A is Riss & Company's No. 135."

In July, 1951, Riss began participating in the Section 22 quotations published jointly by the Southern Motor Carriers Rate Conference and the Motor Carriers Traffic Association. Effective July 1, 1951, Riss and Kilgo Motor Freight concurred in a rate of 186 cents per hundred pounds, minimum 50,000 pounds, on traffic from Ravenna Arsenal to Fort Bragg, North Carolina. By the end of the year, Riss was participating

in a general rate for ammunition and explosives of 65% of the motor carrier rate, 30,000 pound minimum, and 75%, 20,000 pound minimum between eastern and southern points, applicable over more than twenty competing routes.

The general status of Section 22 rates on ammunition and explosives was reviewed by M.P. Hester in a memorandum apparently written for Stone on August 24, 1951. The occasion for this memorandum was the action of Navajo Freight Lines cancelling its participation in Item 30, Hughett's Government Quotation No. 1000-G, because the 50,000 pound minimum weight specified therein conflicted with the minima in Rocky Mountain 43-A and Navajo's individual quotations, and the request of the Army for application of the 65% rate to a truckload minimum weight of 20,000 pounds.

Hester reported that Geyer of Navajo stated that all quotations of ammunition and explosives, except Hughett's were based on 65% of the first class motor carrier rate subject to minimum weights of 30,000 pounds. Hester found the uniformity Geyer suggested, with the exception of three Middlewest and two Rocky Mountain items, where a single rate applied to a truckload minimum of 20,000 pounds and a volume minimum of 30,000.

Hester also reported that the Army's request was "discussed with the carriers transporting explosives in the East" who informed Hester they were disregarding it.

Stone wrote to Colonel F. T. Edson, in the office of the Chief of Transportation, on October 5, 1951, refusing to apply the 65% rate to a 20,000 pound minimum weight.

Disputes which arose which might affect this uniformity were handled through the rate bureaus. Thus, on September 20, 1951, Hester reported to Rhodebeck concerning the transportation of gun barrels:

"Remember the difficulty we had with Interstate Motor Freight System in the Eastern Control Territory reducing the minimum of 24-25,000 pounds to 23,000 pounds.

The September meeting in Cleveland an official of the Operating Department of the Interstate System appeared before a Carriers meeting and stated they were equipped to haul 30,000 pounds in their tandem axle trailers and 23,000 pounds in their single axle trailers and would establish minimum weights accordingly."

Hester further reported that Riss would establish rates for 30,000 and 23,000 pound minima.

Riss' general attitude toward rate-fixing and the antitrust laws is exemplified by the documents relating to the transportation of "freight all kinds" between Great Lakes, Illinois and Eastern points for the Navy. On May 2, 1951, the Eastern Central Motor Carrier Association's manager, E.H. Russell, circulated a collection of Section 22 quotations on this traffic. On May 21, 1951, E. L. Forbell, General Traffic Manager of Chicago Express, wrote to Hester, J.S. Ruscetta of Spector, B.M. Pierce of Mid-State, J. A. Maguire of Liberty, H. H. Moore of Long, and C. W. Hicks of Eastern Motor Express. Forbell stated he had received a letter from the Navy calling his attention to the variations in the quotations made on such traffic. He then stated:

"It is with this thought in mind that this letter is addressed to each of the carriers involved to get together and arrive at some basis of quotation that will prove desirable and still attract the traffic. Your advice and comment as to such proposal will be greatly appreciated."

On May 23, Ruscetta replied stating:

"We are in accord with your suggestion that each of the Carriers involved get together to determine a reasonable basis of rates to protect on this traffic."

He suggested that they meet at Eastern Central Motor Carrier Association's meeting at Hershey, Pennsylvania, in June. Hicks wrote, on May 25, that his rates were set to meet competition, but he would attend the meeting.

On May 26, Moore wrote to Forbell, stating:

"We have received a copy of Mr. Ruscetta's letter dated May 23, 1951, and believe that his suggestion is logical."

He stated that his company would be represented at the June meeting at Hershey and would "take no action until after this meeting." B. M. Pierce wrote Forbell on May 28, stating he doubted if the quotations circulated by Russell were complete, and adding

"I agree with you that if we would all lay our cards on the table, we would accomplish additional revenue without losing any traffic."

On May 29, Payne of Liberty approved the meeting, stating

"At that time it may be possible to work out a uniform basis."

Riss alone refused to attend the meeting. Hester wrote to Forbell on May 28, stating:

"In view of the activities of the Department of Justice and the fact that Section 22 Quotations are not covered by the applications of the various bureaus under Section 5-A, I want no part of any such meeting. Therefore we will not be represented."

Hester quickly made it clear that he did not mean that Riss would not conspire to fix these prices. A note on the file copy of his letter, initialed M. L. (his secretary being named "Maxine") and dated June 1, 1951, states:

"Remind Mr. Hester to make a long-distance call on this about 20th of June."

A memo dictated by Hester on June 20th states:

"Discussed this matter with party on long-distance 'phone. The subject will be before interested carriers at Hershey, Pennsylvania. I agreed to go along with whatever level of rates suggested by conference. We are to be notified of the revised basis in time to issue new quotation." (Emphasis added.)

On May 27, 1951, Hester wrote to Rhodebeck, with a copy to Stone, informing them that the carriers were meeting to discuss these rates in Hershey

the following week.

On July 3, 1951, Hester dictated a memo as follows:

"The subject was discussed at Hershey, Pa. The committee want to check into the competitive rail situation. One or two carriers were to handle the subject with their principals; therefore we are extending our present quotation to September 30th unless sooner changed, cancelled or extended, hoping that in the interim a standard basis will be approved."

On July 25, 1951 C. W. Hicks advised the entire group, including Riss, that the motor carrier rates were the same as the rail rates.

On August 7, 1951, Rhodebeck complained to Stone concerning the reissue of Riss' quotation, stating:

"I also understood that the subject of this entire quotation was to have been discussed at one of the Akron rate meetings and a uniform basis arrived at which would be submitted by all carriers."

The situation was not resolved, and by March 17, 1952, Hester was writing Russell of the Eastern Central bureau asking that the carriers attending "the meeting in Cleveland" be requested to bring their quotations to the next General Committee meeting, "with the view to increasing them."

1952

During 1952, the motor carriers rate-fixing conspiracy assumed the form which persisted thereafter. The habits of both bureau publication and carrier consultation concerning rate levels became firmly entrenched.

Riss evidenced continued firm adherence to the policy of agreed Section 22 rates. It continued and expanded its participation in rate bureau Section 22 quotations and the frequency of its consultations and agreements with other carriers on Section 22 rates.

In August of 1952, Riss entered into a quotation with Wells Cargo, Inland, Ringsby, Boulder Truck, and Strickland on ammunition and explosives from Sierra Ordnance Depot, Herlong, California, to Fort Sill, Oklahoma. Riss expected Ringsby to file the quotation Rocky Mountain 43-A. On August

25, Al Tait, a Riss employee, advised Hester that Ringsby would not file the quotation with the bureau.

On August 27, Hester wrote to K. Tracy Power, the Bureau manager, referred to Ringsby's action, and stating:

"I thought the carriers were going to publish the new quotations in 43-A. What about this out-fit? I will see you in Chicago."

On September 26, 1952, J. C. Sheehan, Traffic Representative of Ringsby wrote to the Rocky Mountain bureau asking that its tenders and quotations be published in the forthcoming Quotation No. 43-B.

In November, 1952, George Graff, Traffic Manager of T.I.M.E., wrote to Al Tait pointing out that Riss Quote 286-52, applying to freight all kinds to Shelby, Ohio, to Maywood, California, had not been published through the Rocky Mountain Motor Tariff Bureau. Graff pointed out that "three or four months ago when M.P. [Hester] was there, it was agreed by all concerned that all these quotations would be given to the Bureau to publish." He suggested the quotation be sent to the Bureau for republication.

Tait replied on December 1, pointing out that Roethlisberger, one of the parties to the quote was not a bureau member, and, therefore, the quotation had to be handled as an individual tender. He agreed to furnish the quotation to the bureau, however, stating:

"It is our policy to publish, through the Bureau, all applicable tenders"

Tait thereupon sent the quotation to the bureau, explaining the circumstances.

The control of rates exercised through the Rocky Mountain bureau quotations is exemplified by the changes in the rate on ammunition and explosives between the Naval Ammunition Dump, McAlester, Oklahoma, and Port Chicago, California.

Item 205, Rocky Mountain 43-A, provided a rate of \$3.96 per hundred pounds, minimum weight 30,000 pounds for this movement. Riss and P.I.E. had an identical rate in Riss Quotation No. 58A-52. This rate, and others in the

tariff were subjected to a 6% uniform increase on August 1, 1952. Riss and P.I.E. changed their rate accordingly. Navajo instructed the bureau to change the rate of \$3.96 plus 6% to a rate of \$3.74 plus 6% for the period September 18, 1952, to October 15, 1952, because Tri-State had in effect a quotation of \$3.96, without the additional 6%, which would be effective until October 15 when 43-B was issued. On September 23, Tait wrote to Ryall of P.I.E. agreeing to amend their 58A-52 to \$3.74, and calling attention to the agreement to reinstate a rate of \$4.20 (\$3.96 plus 6% in 43-B. On September 26, Tait confirmed that the rate should be an actual rate of \$3.96, to \$3.74. A supplement to 58A-52 was issued changing the rate to \$3.96 from September 18 to October 15, and then transferring it to 43-B.

In September, 1952, Hester was bemoaning the fact that the government continued to accept individual tenders. In a letter to Rhodebeck, dated September 2, he reported that Middle Atlantic had filed an application for Section 5a approval of an agreement covering Section 22 rates (later withdrawn) and that Middlewest was proposing to do so (which it never did). He stated:

"If we can get these Section 5A applications filed and receive any cooperation out of the military, possibly we can have some uniform control over the level of Section 22 rates If there is some way that these individual quotations could be placed in the bureau issues and not honored individually by the military the procedure for the future would be very simple."

Riss and its co-conspirators found the way without Section 5a approval.

On October 15, 1952, Riss cancelled 32 of its outstanding quotations and transferred its rates to Rocky Mountain 43-B.

Riss' general attitude to price competition is reflected in a letter from Rhodebeck to Hester on April 9, 1952, commenting that Spector's action in filing a rate of \$1.34 for traffic where the competitive rate was \$1.35 "had all the aspects of chiseling."

The other motor carrier bureaus also continued to be active. Thus on September 9, 1952, Hester had to explain the basis for a Riss rate on shells from Burlington, N. J. to Parsons, Kansas, to E. H. Russell, General Manager

of the Eastern Central bureau, because

"At the last Board of Trustees meeting Bob Cooper [of Cooper-Jarrett, Inc.] jumped on me about our quotation"

On November 19, 1952 Union Freightways, which had a route with Riss on cartridges from Sioux Ordnance Depot, Nebraska to Pueblo Ordnance Depot, Colorado, notified Middlewest that since their competitor Watson Brothers was republishing this movement in 303-B at a 9% higher rate, Union Freightways wished to increase its rate by the same amount at the same time. Riss concurred by letter dated December 5.

Central and Southern Motor Freight Tariff Association decided in May of 1952 to stop publishing Section 22 quotations because the matter had become "unwieldy" that it could not maintain control. It continued, however, to perform the service of keeping its members advised as to the quotations being made.

The Southwestern Motor Freight Bureau found a different way to solve its problems. On December 9, 1952, Riss inquired why a rate in which it was participating had been reduced. H. G. Thompson of the bureau replied on December 15, that it was because a participant had requested the publication. Riss responded through Tait, its General Traffic Manager, that it seemed irregular to have the bureau publish the rate on Riss' behalf without its knowledge.

J. D. Hughett replied to this letter on December 31, 1952, explaining that when he agreed to file Section 22 quotations for the carriers

"the question of violation of the anti-trust laws was discussed rather fully and for that reason it was determined that we would publish in Tariff No. 1000 what the carriers requested us to publish and then we would notify the other carriers and any of those who wanted the rates could advise what their wishes were in the matter."

Hughett went on to explain that this system didn't work because in many instances the bulk of the traffic had moved by the time the others could make their wishes known. Therefore,

"it was determined by the carriers that we would place in effect any quotation that came through for the account of the

participating carriers of Tariff 1000 and make it applicable for all carriers"

Carriers dissatisfied with the rate were permitted to terminate their participation by a later notice.

Hughett further stated

"The plan as now followed has seemed to us to work better than any other plan and it is our firm conviction that there are more carriers using Tariff 1000 for the purpose for which it was intended than probably in any other territory. In other words, there are less individual quotations within the Southwest we think than probably there are any other place."

V.

THE CONTINUATION OF THE CONSPIRACY

The rate-fixing conspiracy outlined above continued at least through 1957. The mechanics of the use of the rate bureaus throughout this period is described in Part VI of this statement.

One change of note did occur on May 18, 1953, when Central States Motor Freight Bureau abandoned quoting new Section 22 quotations and cancelled all of its outstanding quotations on advice of its attorneys. In a letter to Riss, the bureau stated that it was taking this action in view of the fact that its by-laws did not provide for publication of Section 22 quotation, and in the light of "the representations made by us to the Interstate Commerce Commission in our pending Section 5a Application."

Middle Atlantic Conference, by action of its Board of Directors, took the same step, effective October 1, 1956.

The continuation of the conspiracy, in addition to the rate bureau activities hereinafter described can best be illustrated by some specific examples:

1. On July 7, 1953, A. E. Moak, Traffic Manager of Hayes Freight Lines, wrote to C. R. Merchants of Mid-Continent Transportation Co., sending copies to Newbold of Riss, O. P. Peck of Herrin, Lallier of Strickland, and

W. F. Kirk of Hayes. He confirmed the fact that Mid-Continent had a rate of 247 cents per hundred pounds in effect from Joliet, Illinois, to Doyline, Louisiana, which it had agreed to cancel effective September 13, 1953. Moak stated that Hayes' present rate was 275, but that Hayes, Herrin, and Strickland had agreed to protect 247 until the Mid-Continent rate was cancelled. He then stated:

"There is some talk now about the carriers getting together and raising the rate up to \$3.00, which is 65% of the first-class exception rate. Needless to say, we are not only willing but anxious to get the rate up to \$3.00 if all of the carriers agree it is the basis that should be used. Therefore we would like to have an expression from both you and Mr. Newbold of Riss & Company as to just what action you will take on the rate to be applicable after September 13. If you do agree that we should go to \$3.00 then we shall also get our tender in cancelling the \$2.75 rate and making the \$3.00 rate applicable on and after September 13."

Before this letter could be mailed, Riss & Company had agreed by telephone, and Moak added a postscript to his letter noting this fact that asking an immediate reply from Merchants. The carriers found that the competitive rail rate was 275, however, and adopted that basis. On October 22, 1953, F. W. Wise, of Mid-Continent wrote to Fuller of East Texas and to Peck that

"Our present rate is filed on a 275 cents basis and we intend to cooperate with every carrier concerned to hold that basis."

2. On January 9, 1953, Hester reported that the Denver carriers including Denver-Chicago, Navajo, and others, had agreed to cancel all of their individual quotations on coins from the Denver mint and the San Francisco mint and to establish uniform rates in a Rocky Mountain bureau quotation, a Middlewest quotation, and in Hughett's quotation. The effective date of the change was to be March 1, and Denver-Chicago and Watson, Riss' principal competitors for this traffic, had agreed to go along as of that date. Riss agreed to this change for all points which it served directly.

3. On April 14, 1954, Newbold informed R. F. Neugebauer, another Riss employee, that Riss and its competitor Mid-States had agreed to increase

their rate for empty hand grenades from Sherrill, N. Y., to Lone Star Ordnance at Defense Texas, from \$2.12 to \$2.62, the latter being the rail rate.

4. On September 10, 1956, Newbold received a letter from A. E. Rohrer of Interstate addressed to Riss, Roadway, Chicago Express, Eastern Express, and General Expressways, proposing an increase in the rate charged on Government records from Washington to St. Louis. He proposed that an increase be discussed at a rate bureau meeting in Cleveland the week of September 17. On September 27, Forbell of Chicago Express wrote to these carriers, referring to their "conversations at Cleveland, Ohio last week," and stating that his line would increase its rates to \$1.52 (23,000 pound minimum) and \$1.44 (30,000 pound minimum) effective November 1. On September 24, Riss issued a supplement to its quotation, effective November 1, naming identical rates.

5. On June 28, 1954, Tait sent Riss quotations Nos. 667-54 through 677-54 on ammunition and explosives to D. E. Dunlap, Traffic Manager of Watson Brothers, a principal competitor of Riss for explosives traffic and a carrier with which it published no interline rates. These tenders were sent to Dunlap before they were issued at the request of Reardon of Riss. Tait stated in his covering letter:

"Will you please advise as quickly as possible your understanding with Mr. Reardon as to the filing of these rates?"

"Tenders being held pending your reply."

Dunlap advised Riss through Reardon that it was interested only in Nos. 667, 671-674, and 677, but that it was not then in a position to establish all of these rates at that time. He suggested Riss go ahead and file its quotations, stating:

"If, and when, we do file, our rates will be competitive with the rates you are establishing here."

VI.

THE TECHNIQUES OF THE CONSPIRACY: USE OF RATE BUREAUS

The motor carrier rate bureaus of which the plaintiff was a member and with which we are chiefly concerned here constituted, during the period involved in this counterclaim and for several years before, perhaps the largest and most powerful illegal groups in the United States. Substantially all the motor carriers of any size in the country were members of whichever rate bureau of bureaus had jurisdiction over the regions in which they did business. The activities of these bureaus, in connection with both commercial and government traffic, were almost exclusively directed towards the fixing of rates among competing truck lines and combinations of truck lines. There was general awareness among motor carriers during this period that the activities of these organizations were illegal until approved by the Interstate Commerce Commission under § 5a of the Interstate Commerce Act. Nevertheless, the carriers continued to resort to the tariffs published by these bureaus, continued to attend meetings at which the level of rates was agreed on by the industry, and continued to use them as a medium for the dissemination of competitive rate information.

The activities of these bureaus which we will consider in this memorandum fall into two main categories. The first includes methods by which price competition among motor carriers was prevented through the publicizing of the prices of all competitors. These methods included the publication of rates in open tenders organized like tariffs, the circulation in advance of proposed rates to be applied to commodities moving between given points in order to permit all carriers to offer identical rates, the circulation of information regarding rates offered by carriers directly to the United States rather than through "tariff" tenders, and the activities of some rate bureaus as a joint agent of communication with government agencies. The second category includes methods whereby the rate bureaus were used as a means of bringing all motor carriers together to agree on general simultaneous rate adjustments. We will consider these activities, especially to the extent Riss participated directly in them, *seriatim*.

A. Methods of Circulating Rate Information Among Carriers

1. Tariffs

The customary structure of a tariff is such as to facilitate a carrier's joining in a competitor's rate with a minimum of difficulty. Customarily, a tariff is divided into a large number of "Items," dealing with a particular commodity between a group of points. Within the item, there will be shown a pair of points, the rate applicable to the commodity between those points, and a routing. Customarily the routing will be identified by a number in the rate section of the item. The rate section will be followed by a routing section, which will list under each route number the carriers or combinations of carriers who offer service on that commodity between those points.

The ease of avoiding price competition under these circumstances is manifest. If another competitive carrier or group of carriers wishes to offer to perform this service, it or they need only add their name to the list under the appropriate routing number. No addition to the rate portion of the item is necessary; the new carrier or group of carriers simply adheres to the rate already shown in the rate column by joining the routing list. Indeed, it is evident from the fact that a tariff is arranged according to such a structure that rate competition is not contemplated.

The process of adding the new competitor's name to the list under the appropriate route number is in fact exactly what is done. Since most truck routes are interline routes, involving more than one carrier, it is necessary that all carriers who would participate in a proposed new route agree to do so. Accordingly, a carrier who is interested in handling a given commodity between two points, in conjunction with other connecting carriers, may suggest to those others that they join in the routing under the appropriate item. If all agree, the rate bureau is notified and instructed to add the new route to the competing routes already listed. Very commonly, in fact, the carrier proposing such a step will not even trouble to inquire of the other connecting carriers in advance whether they are interested; it will simply instruct the bureaus to publish the routing upon receiving concurrences from the other lines who are to participate,

sending copies of this instruction to those others. They will transmit their concurrence or not, as their judgment dictates. (It should be observed that under the Interstate Commerce Act, motor carriers, unlike railroads, are not required to establish through routes and joint rates with one another. Any such arrangement is purely voluntary with the carriers concerned.)

Hence, the tariff method provides an extremely easy method for posting and publicizing prices, or rates as they are referred to in this industry, in such a fashion as to guarantee that for all practical purposes the price first established will be adhered to by competitors who subsequently undertake to offer the same service; and to guarantee further that any adjustments in that price will be made only by the joint action of all the competitors involved. That is precisely the result that the tenders here involved attained. Their structure was that of a tariff, and the parties to them, and the plaintiff in particular, used them in just that way.

For example, suppose a military routing officer desired to move 30,000 pounds of high explosive JATO units from Azusa, California, to Bynum, Alabama, in January 1954. He would consult Item 2660 of the appropriate tender, Rocky Mountain Motor Tariff Bureau Government Quotation 43-C, which would inform him that the rate was \$6.27 per hundred pounds, "Route 2." Immediately below the rate table he would find a list of routes. Under "Route 2" there appeared in fact three different routes, composed of three different combinations of motor carriers, any one of which he could use at the \$6.27 rate. In other words, three different competing groups of carriers published in the tender the same rate for the same service.

Limitation of space prevents our setting forth here in full detail every example of the use of tenders of the tariff type for price-fixing purposes by Riss and its fellow-conspirators during the period in question. To begin with, the number of such tenders involved is considerable. The following is a partial listing of a few of the more important tenders containing section 22 rates in which Riss participated in 1950-57.

Rocky Mountain Motor Tariff Bureau. This organization issued its Government Quotation 43-A effective December 9, 1950. 43-A was succeeded

in turn by 43-B, effective from October 15, 1952, to January 28, 1954; 43-C from January 18, 1954, to March 25, 1955; 43-D from February 7, 1955, to 1956. Quotation 51 replaced much of 43-D on March 5, 1956, and Quotation 52 replaced the rest on May 17, 1956. Quotation 53 followed effective February 14, 1957. There was also a Quotation 49 in effect during much of the period from 1953 on.

Middlewest Motor Freight Bureau. Middlewest's principal government quotation was its 303 series, beginning with Quotation 303 effective December 12, 1949, and running successively through 303-A, 303-B, etc., at least to 303-E effective December 10, 1954.

Southwestern Motor Freight Bureau. This bureau's main government tender was its 1000 series. This began as Hughett's "Tariff" 1000 in or before 1948, and was successively replaced by 1000-A, 1000-B, 1000-C, etc., at least through 1000-Q effective April 30, 1958. The issue of this tariff for the time being was commonly referred to simply as "Tariff 1000" without the qualifying letter.

Middle Atlantic Conference. This organization issued "Government Rate Sheets," each with an individual number, from at least 1951 on.

Southern Motor Carriers Rate Conference. This organization published a series of Government Rate Sheets designated, inter alia, as 41-D, 42-C, 45-D, and others.

Riss AEF and Other Private Tenders. In addition to the tariff-type tenders published by the above and other motor carrier rate bureaus, Riss also participated in such tenders published by itself as publishing agent for its own account and that of other motor carriers who delegated to Riss the authority to make and publish rates shown therein. These tenders functioned in all respects like the tariffs of the regular rate bureaus. They dealt primarily with ammunition and explosives. The most important of them were: AEF-1, effective October 1, 1954; AEF-2-TC, effective from March 1, 1955, until November 27, 1955; AEF-3-ECD, effective from March 1, 1955, at least until October, 1957; AEF-4-TC, effective November 19, 1955; and AEF-5-ECD, effective from

November 19, 1955, to November 30, 1956. Other important Riss private tariffs were those designated 850-55, effective from March 11, 1955, to April 15, 1957; 851-55, effective March 15, 1955; 860-55, effective from April 11, 1955, to April 9, 1957; and 1050-56, effective from April 27, 1956, to May 13, 1956. The close relationship between these private "tariffs" and the regular rate bureau tenders is shown by the fact that at least three of the private tariffs named (tenders AEF-2-TC, 850-55, and 1050-56) were on their cancellation incorporated into Rocky Mountain Government Quotation 52.

These tenders all varied somewhat as to form. In particular, those described as "rate sheets" tend to be rather more disjointed and confused than those designated as "tariffs", or "quotations". But the basic structure of them all follow the tariff principles we have described. Accordingly, to reduce this portion of their memorandum to manageable brevity, we will concentrate on a single, typical, and very important tender, Rocky Mountain Motor Freight Bureau Government Quotation No. 43-C. Even there we have room to refer to only a small proportion of the great amount of cumulative evidence of the collusive use of the tender in order to fix rates.

This quotation was in effect roughly from January, 1954, to January, 1955, though it was not formally cancelled until March 25, 1955. Speaking very roughly, it dealt primarily with traffic between points in the Rocky Mountain and Pacific Coast states on the one hand, and points east on the other; with some traffic within that western territory included. It will be recalled that Rocky Mountain did not receive § 5a approval until 1958.

As a random example: On June 3, 1954, Newbold of Riss wrote Rocky Mountain and asked that a route via the carriers Ashworth and Riss be added to those published under Item 600 on ammunition and explosives between three different pairs of points, viz. from Hawthorne, Nevada, to Iowa Ordnance Plant (Route 167); from Hawthorne to Joliet Arsenal, Illinois (Route 168); and from Hawthorne to Eudora, Kansas (Route 169). The letter has reference to a "bulletin No. QR-53 regarding rates which have been published under special

publication in Quotation Tariff 43-C". Ashworth concurred by letter dated June 14. Each of these three routes was in fact added by Second Revised Page 69-B of tariff 43-C, effective June 28, 1954. In each of these three cases there were already three competing routes established in the tariff. The rate was not changed; Riss and Ashworth simply joined with their competitors in maintaining -- "protecting" is the word often used -- the rate already established.

As another random example, on September 8, 1954, Tait of Riss wrote Rocky Mountain asking the "addition" of a new route including Riss to Item 550, dealing with ammunition and explosives from Indiana Arsenal to Umatilla, Oregon. The other proposed participants concurred, and the routing was added to Route 42 of Item 550 by 15th Revised Page 58-A of Tariff 43-C. There were already eight competitive routes in effect; this made the ninth. Many of the carriers participating in the new route already participated in the other eight. The rate, of course, was not changed; Riss merely adhered to the rate already fixed.

Perhaps the clearest example we can provide of this process, though on a rather small scale, is the history of JATO units from Nimbus, California. There is located near the latter town an enterprise called Aerojet Engineering Corporation, which manufactures JATO units. JATO is a word formed from the initial letters of the phrase "jet-assisted take-off"; JATO unit is a rocket device designed to be attached to a heavily loaded airplane to give it greater power when taking off. JATO units are classified as high explosives.

The original publication of Rocky Mountain Quotation 43-C contained (under Item 2660) rates on JATO units to only four points from Nimbus. Two of these possible movements were each already served by three competitive motor-carrier routes. Riss participated in two of the three routes from Nimbus to Seneca Ordnance Depot, N. Y. (All these competitors offered the same rate, of course.) During the course of the year 1955, shipments of JATO units from Nimbus apparently multiplied manifold. The development of Item 2660 in Rocky Mountain 43-C during that year affords a perfect example of the open-pricing methods followed by motor carriers, including Riss, with the aid of the publicity

afforded by the existence of the Rocky Mountain Motor Tariff Bureau.

The simplest way to follow this process is to trace the history of a few of the destination-points from Nimbus to which rates were offered.

Nimbus to Seneca Ordnance Depot, N. Y. As noted, when 43-C came into effect on January 18, 1954, three routes were offered for this movement. Riss participated in two of these routes. The rate was \$7.82 (min. 20,000 lbs.) or \$6.77 (min. 30,000 lbs.), over all three routes, of course. On March 11, a route Valley Motor Lines - P. I. E. - Riss was added at the same rate as the other three competing routes. (Later another originating carrier was substituted for Valley.) On June 1 another route, Constructors Transport - P. I. E. - Riss, was added. On August 4 three more routes were added (none of which included Riss). In July P. I. E. proposed a routing Sacramento Freight Lines - P. I. E. - Riss; after some hesitation by Riss, this was added effective July 12, though Riss forgot to authorize Rocky Mountain to publish its concurrence until September 20. This brought the total number of competing routes to nine. A tenth not involving Riss was added on October 4. An eleventh alternative was added on December 13. When the last page of this item of 43-C was issued on January 24, 1955, there were a total of eleven competing routes offered on JATO units from Nimbus to Seneca Ordnance. The rate still stood exactly where it had been a year before. Of all the swarm of competitors who had descended on this business, not one had touched the rate level.

Between Nimbus and Bynum, Alabama. By the same process, this movement grew from three routes in January, 1954, to 11 routes in January, 1955. The rate of \$6.27 never changed. (Riss participated in none of these routes.)

Nimbus to Pueblo Ordnance Depot, Colorado. On February 2, 1954, Ryall of P. I. E. wrote Newbold of Riss suggesting the establishment of this route on JATO units. After some negotiation, a route Valley Motor Lines - P. I. E. - Riss was established on March 8, effective February 16.

The rate was \$4.51. By January, 1955, there were nine competing routes, in three of which Riss participated. The rate was still the same.

Nimbus to Letterkenny, Pennsylvania. This was first established March 11, 1954, routing Valley - P.I.E. - Riss, rate \$7.05. In January, 1955, there were twelve competing routes, in three of which Riss participated. The rate was still \$7.05.

Nimbus to Ravenna Arsenal, Ohio. This grew from one route (Constructors - P.I.E. - Riss) published June 1, 1954 (effective May 6) to four in January, 1955. Riss participated in only the one route, which had no other carriers in common with the other three. The rate did not change.

Nimbus to Pine Bluff, Arkansas. This began with one route effective May 6 and grew to nine in January, 1955, in two of which Riss participated. No competitor apparently made any effort to offer rate competition, since the rate remained the same throughout.

The same story was repeated throughout the year, as, apparently, the business of the Aerojet Corporation flourished. By January of 1955 the page of 43-C (p. 177) on which Item 2660 appeared had gone through nineteen revisions; not only had Item 2680, which had formerly shared the page with it, been crowded off, but the route listings had so proliferated that they had spread on to a page 177-A, then a page 177-A-1, and finally a page 177-B. In part this is accounted for by the fact that routings were now provided to 26 destinations instead of the original four; but in greater part it is accounted for by the fact that all the carriers who could arrange a competitive routing to any of these destinations had done so--always, of course, at the same rate as their competitors.

Riss, in fact, and no doubt other members of these bureaus as well, maintained a definite policy of studying tenders of the tariff type closely to find any published item in which they could join. A principal occupation of Strohfield of Riss was the study thereof and the calculation of whether Riss could make a profit by joining in an item at the rate fixed by the

competitors who already offered the service. He would then direct a memorandum to Tait asking that Riss "become competitive" on the item, or "participate", or "establish our concurrence." Tait would then address a request to Rocky Mountain asking that the suggested route be added. If the other carriers involved concurred -- sometimes, of course, they would not -- the new route would be added. This occurred on such a vast number of occasions, and on nearly every conceivable commodity, that we can only offer a half-dozen completely random examples here.

Strohfield to Tait, December 7, 1954: "The above captioned item quotes a rate of \$3.25 per cwt. on 20,000 pounds minimum, applicable on Bandages...moving from Dallas, Texas, to Los Angeles, California. Please establish our concurrence on this item..." Proposal sent December 14.

Strohfield to Tait, May 24, 1954: "Please refer to Item 1900 Rocky Mountain 43C [combat boots from St. Louis to Mira Loma, California] effective May 17th, suggest we concur in this item...." Proposal sent, with two alternative routings, November 2.

Strohfield to Tait, October 21, 1954: "Please arrange our concurrence in the above subject item which quotes a rate of \$6.40 per cwt. on 24,000 pounds on Cotton Clothing moving from Manti, Utah to New Cumberland, Pennsylvania...." Proposal sent November 3.

Strohfield to Tait, February 14, 1955: "We would like to participate in the above mentioned item [tarpaulins from Chicago to Lyoth, California, at \$4.19 per cwt.]....." Proposal sent March 23.

Strohfield to Tait, February 15, 1955: "Please arrange for Riss to become competitive in the above captioned item [ordnance items from Defense and Texarkana, Texas, to Oakland, California, at \$3.88 per cwt.]." Proposal sent March 23.

Strohfield to Tait, November 10, 1954: "The above referenced item covers Projectile Parts...moving from Los Angeles, California, to Oklahoma City, Oklahoma, on a rate of \$2.48 per cwt. on 30,000 pounds

minimum truckloads. We would like to become competitive in this item...."

-Proposal sent December 1.

Multiplication of these instances, which are legion in connection both with this tariff and others, would merely be cumulative. The utility of Bureau tariffs in providing Riss and its fellow members of the Bureau with a ready-made rate-fixing mechanism is obvious. This is well illustrated by a telegram of June 11, 1953, from Sams of Garrett to Tait of Riss:

"Your company assessing 556 rate explosives Burlington Iowa Umatilla Ordnance observe Item 285 43-B We also have concurred in 491 rate Watson Ashworth Will endeavor get others up if you can hold 556 basis"

And by a letter of August 25, 1954, from Hewett of Gallagher Freight Lines to Peck of Herrin Transportation Company, with copies to many carriers including Riss:

"This has reference to your letter dated August 19, 1954, your File No. 139-52, wherein you point out that the rate of 490 cents we publish via the above route between Warner, Utah and Doyline, La., is considerably lower than the competitive rail quotation of 566.95 cents on Volume minimum weight of 50,000 lbs.

"We thank you very much for the work you have done in checking out these rates and calling it to the attention of the carriers involved. We are definitely in favor of bringing this rate, or any similar depressed quotation rate, up to the competitive level.

"We believe that if we seek the co-operation of Riss & Co., Inc., Pacific Intermountain Express and Ringsby Truck Lines, Inc., we will have pretty well covered the field of all carriers who could participate in this movement."

On August 26, 1956, Hewett wrote Peck another letter, almost identical, with regard to another item in 43-C.

The rate information made available in these "tariffs", and the contacts with other carriers made possible by them, aided Riss in establishing rates outside the "tariffs" as well. Thus, on November 10, 1954,

Tydeman of Garrett Freightlines wrote Rocky Mountain, with copy to Riss, that his firm had "just completed an examination of all routes published in U.S. Government Quotation 43-C, to and from the various Utah installations. It is our desire to add our participation into those routes where we are not named at the present time." He suggested three additional routes on ammunition and explosives in which Riss might join. Quinn was agreeable to one, but instructed that it be published not in 43-C but in Riss' AEF-1. Another reminded him that Riss had such a route with Ashworth, which "better put... in A. E. F. with Ashworth only."

This and other "tariffs" were used similarly by Riss. Thus, on June 18, 1952, Rhodebeck sent Tait a list of items in Middlewest 303-B in which Riss did not participate. "This should be checked," he urged, "and those which are OK should be amended immediately and those with any question should be referred to Strohfield and the writer."

2. Circulation of Rate Information Otherwise Than Within Bureau Quotation.

The pooling of information with regard to competitors' rates which the tariff system made possible was extended even further by some bureaus, who provided bulletins that listed some rate proposals before they were to go into effect, in order to give competitors an opportunity to match the rates proposed; and which in some cases even listed section 22 tenders which had been made directly by carriers rather than through the appropriate bureau.

Middlewest Motor Freight Bureau was particularly active in this regard, and Riss took every advantage of the opportunities this service offered.

Thus Middlewest Motor Freight Bureau Bulletins Nos. 91 and 92, of late June and early July, 1952, listed numerous "Carrier Quotations on Government Traffic." On July 1, 1952, Tait forwarded a copy of many of these quotations to Rhodebeck, Strohfield, Young, Martin and Quinn, with a request to "advise which of the tenders, if any, are to be met by Riss & Company, Inc." Strohfield responded on July 17 with a request that Riss

match a rate therein listed on projectiles and parts from Doyline, Louisiana to Savanna, Illinois, and transmitted "several items concerning explosives... for the opinion of the government division..." Again, on February 12, 1953, Tait transmitted to Strohfield, Young, Rhodebeck and Quinn two items from "Middlewest Bulletin No. 14, File C-5.44, February 4, 1953," asking: "Will you kindly advise your interest in meeting these quotations?" On the same day he asked the same question of Quinn regarding an explosives quotation referred to in the same bulletin. The next day he forwarded a larger group of quotations taken from "Middlewest Motor Freight Bureau Bulletin No. 20, File C5.44, dated February 11, 1953," asking that the addressees "kindly review these quotations, advising which quotations, if any, are to be met." Rhodebeck responded under date of February 17, and Quinn by the return of his copy of the letter, with his comments endorsed thereon. On March 10, Quinn was sent another ammunition quotation from Bulletin No. 25 for "such action as you deem desirable." Rhodebeck and Strohfield were sent a similar inquiry on March 25 concerning matter in Middlewest Bulletin No. 36; and Reardon and Rhodebeck were sent two more such communications dealing with Bulletins 49 and 50, on May 1, 1953. Meanwhile, Glenn Smith of Riss had on March 25 taken prompt steps to arrange with Northwestern Transit Company to match a rate published in Bulletin 36 on projectiles from Dallas to Kingsbury, Indiana.

On April 26, 1954, Tait sent to Quinn two recent Middlewest bulletins

"relating to tenders filed with various government agencies. The information shown no doubt duplicates that received by you from other sources but may have some information not disclosed by your sources.

Will you kindly examine these bulletins advising any action you wish taken in connection with rates that may be competitive?"

Quinn replied:

"Al: I have checked all of these and marked quotes '?' please see if we are competitive as to rate--see pages 7, 8 & 9."

On occasion Middlewest gave its members every facility for taking advantage of the opportunities afforded by this publicizing of individual quotations. Thus, on April 7, 1952, that Bureau wrote all its members who participated in the carriage of cartridge clips from Wichita, Kansas, to Lake City, Missouri, that:

"We hold instructions to publish rate of 80 cents per hundred pounds, minimum weight 30,000 pounds, in lieu of present rate because of an individual quotation that we hold in our file that shows this rate.

"In order that all the carriers in the item may be on a competitive basis the rate of 80 cents per 100 pounds, minimum weight 30,000 pounds, will be published for account of all carriers unless within ten (10) days of this letter we are notified in writing that the present rate of 83 cents, minimum 30,000 pounds is to be retained for your account."

Nor was Riss the only motor carrier to avail itself of this service; for example, on July 30, 1953, Horst of Central Freight Lines wrote Newbold of Riss that he noticed an independent section 22 quotation on ammunition and explosives between Joliet Arsenal, Illinois, and San Jacinto Arsenal, Texas, which had been published by Middlewest, and suggested that Riss and Central jointly meet this rate.

Southwestern Motor Freight Bureau was also active in providing its members with full information regarding their competitors' rates. Southwestern published, from at least late 1952 until at least the middle of 1957, a regular bulletin of individually-filed section 22 tenders of which the Bureau had received information. These bulletins also reported on rail section 22 quotations of which the Bureau had learned. During part at least of the period under consideration Southwestern also published a regular bulletin called "Competitive Rate Information," which kept members posted on rail rates.

That Riss put this information to the use for which it was intended is shown by a letter of December 18, 1952, from Tait to Quinn, Rhodebeck, and Roberson, transmitting the latest report and asking whether the addressees would be "interested in publishing similar tenders."

Advance circulation of Riss private tenders was equally useful for this purpose. Riss AEF-1 was issued on August 16, 1954, but apparently a draft circulated among interested carriers in advance. On August 13, 1954, Kelsey of Union Freightways wrote Tait:

"We refer you to Page 21 of your Tender No. AEF-1, naming the rate between Army Chemical Center, Edgewood, Maryland, and Sioux Ordnance Depot, Sidney, Nebraska. You will note the rate on 30,000 lbs. is listed as \$3.46.

"... We have checked other carriers for their current rate on this traffic and determine that the present applicable rate to be \$3.65. Since we do not wish to cut a rate, we call this to your attention with the thought you will want to revise page No. 21 of the aforementioned tender to read \$3.65.

"We are withholding our signed concurrences to your Tender No. AEF-1 until receipt of advice from you on how you wish to amend the above rate, or your reason for the \$3.46 rate..."

Original Page 21 of AEF-1, as issued, provided the rate of \$3.65 on this item.

3. Transmission of Armed Forces Rate Requests.

One of the important functions performed by several of these organizations was that of a central clearing house for the negotiation of rates with the Services. Each of the Services maintained in its transportation department in Washington an office charged with the negotiation of freight rates and classifications with the carriers. At intervals these offices would study the rates applicable to a commodity to see whether in their opinion they should be adjusted downward. If so, a presentation would be sent to the rate bureaus over the name of the officer in charge, setting forth the reasons why, in the

service's opinion, the rate should be changed. This presentation would be distributed by the rate bureau to the carriers who might be interested, for their action. Joint distribution in this manner minimized the danger that negotiation by the carriers independently might result in rate competition rather than rate-fixing. This service was performed at least by the Middle-west Motor Freight Bureau, the Southwestern Motor Freight Bureau, and the Rocky Mountain Motor Tariff Bureau, and perhaps by other bureaus as well.

The form followed in performing this service varied only slightly from one bureau to another. Rocky Mountain very commonly transmitted to its members a reproduction of the letter from the officer making the request, accompanied by a short cover letter of which the following (dated April 19, 1954) is a typical example:

"To participating carriers in
U. S. Government Quotation 43-C:

"Attached is a copy of a letter which we received from the Department of the Army. If any carriers desire to participate in the requested rate, please advise the bureau and have the carriers involved in the proposed joint routings furnish the bureau with their authorization."

Where the Service request was comparatively brief, it would be copied into the body of a communication similar to the above.

Southwestern also transmitted such requests verbatim on occasion, and on other occasions merely transmitted a summary of the quotation requested. They might or might not be transmitted with the idea that publication of resulting adjustments by Southwestern would be necessary; as Southwestern informed the Director of the Navy Freight Rates and Classification Division on March 1, 1955, "When no publication is involved by this organization we have advised recipients of letter[s] of this nature to contact either your department or their publishing agent." Southwestern thus acted as a central agency for transmitting to its membership the maximum possible amount of information regarding the

rates sought by the armed forces.

Middlewest assigned each such communication a formal number and usually distributed to its membership a summary of the proposal in tabular form with instructions that "any member carrier desiring to join in this quotation may do so by communicating with this office on or before [date], and publication will be made in our Tariff..."

Whatever the mechanics used, the result was the same. All motor carriers who would normally have been competitive for military traffic were presented simultaneously with the same proposal, and offered the opportunity, not to compete for the business, but to "participate in the requested rate," or "join in this quotation." Even where, as on occasion with Southwestern, the transmission was made purportedly for information only, it is obvious that collusive rate-fixing was facilitated by the availability of this pool of information. The fact that this sort of activity would, without section 5a approval, violate the anti-trust laws was recognized by some motor freight bureaus, who refused to perform this intermediary function for the armed forces.

B. Joint Rate Action Through Rate Bureaus

The maintenance of an industry-wide fixed price structure through organizations such as the rate bureaus has as a logical corollary the principle that changes in rates must be made through the same industry-wide medium. That is in fact what took place. Proposals for rate changes, particularly across-the-board percentage increases, were handled through Standing Rate Committees or other groups on which all competitors were represented. Each of the major rate bureaus of which Riss was a member engaged in this sort of activity.

1. Middlewest Motor Freight Bureau.

This organization has jurisdiction roughly over the section of the country between the Ohio-Mississippi and the Rocky Mountains. It will be recalled that it received Section 5a approval only in late 1957.

Middlewest's handling of rate adjustments is exemplified by its "Proposal C-695" of 1952. On April 30 of that year the Bureau notified its members that

"We are in receipt of the following Proposal for treatment of all rates in Tariff 303-B:

"Proposal C-695: Increase rates in MMFB Tariff 303-B by nine (9) percent.

"Justification: Adjust rates to compensate for increased operating costs.

"Inasmuch as this is a proposition not treated under our commercial rate procedure it is necessary that each carrier now participating in Tariff 303-B notify us immediately of their adoption or declination of this adjustment."

On May 6 Hester of Riss wrote Rhodebeck:

"The proposal appeals to me. I believe that all the carriers in this territory want it as long as we do not go above the day's rail level.

"Can you see any objection to taking the increase?" Without waiting for Rhodebeck's reply, Hester wrote Middlewest on May 13, 1952 that

"we are of the opinion that these rates should be increased observing any rail quotation or individual rail rate as a maximum, providing that all carriers party to the tariff go along with the increase."

On May 15 Rhodebeck warned that Riss should proceed with caution lest the increase result in the loss of some traffic to the railroads. "It seems to me," he observed, "that some investigation should be made by the Bureau to determine whether or not the 9% increase would still keep us competitive."

On June 10 the Bureau notified all carriers that response to its proposal had been such that a meeting would have to be called for June 25 in Kansas City. In preparation for that meeting Tait asked Rhodebeck and Strohfield for any further comments they might have. Strohfield replied on

June 13 that he was in favor of the increase, adding:

"I believe all the carriers would go along with this except Strickland. They have been the problem child 'all the way' on rates in 303B.

"My only opinion would be 'stay competitive. '"

On July 18 Middlewest issued a lengthy report of the changes agreed on at the Kansas City meeting. These changes included a considerable number of agreed rate increases.

On March 16, 1953, the Standing Rate Committee, of which Newbold was a member, met in Kansas City and decided on several amendments and modifications of tender 303-C, the successor to 303-B. The discussion also included matters with reference to the next tender 303-D, which was shortly to be issued.

In the summer of 1953, as a result of an ICC decision known as "docket 28300," a new class scale of rates was adopted by the railroads and followed by the motor carriers. This change caused considerable concern to carriers who participated in 303-D, since that tender was keyed to the current class scale and the adoption of the new scale would have produced a rate reduction in many instances. After considerable correspondence among the interested carriers, including Riss, Middlewest published at their request on October 22 a provision in 303-D that maintained the old classification and "protected" the rates.

2. Middle Atlantic Conference.

This organization has jurisdiction over Virginia and Pennsylvania and the states to the northeast. It will be recalled that it received Sec. 22 approval in late 1954.

The Conference reported to members on May 1, 1952, that "At the last meeting the General Rate Committee approved a 10% increase in all government rate sheets observing competitive rates as maximum, where necessary." Members were asked to report "any instances where such

increases should be waived in whole or in part and the reasons therefor. In the absence of such advices, we will proceed with authorized increases."

3. Southwestern Motor Freight Bureau.

This bureau has jurisdiction, roughly speaking, over the states of Arkansas, Louisiana (west of the Mississippi), Texas, New Mexico, and Oklahoma, and certain interterritorial traffic. It received section 5a approval in August 1955. Its principal Section 22 tender was its Tariff 1000 (and successors 1000-A, 1000-B, etc.).

The Rate Committee of the Bureau met regularly to consider Government rate matters. Thus, at a meeting on April 9, 1952, the Rate Committee discussed a suggested rate on projectiles between points in the southwest, and declined to approve it, recommending a different change instead. Sable of Riss questioned this decision, and wrote Hester on June 14:

"You will recall our discussing this situation and the desire of Strickland Transportation Co. to have us increase our rates on these commodities. It was my understanding that we were holding up the situation and that the rate would not be increased. It now appears that Mr. Hughett has gone ahead and increased the rate regardless.

"I am bringing this to your attention for whatever action you see fit."

On October 3, 1952, the Bureau published a proposal to increase all Texas intrastate rates by 8%.

On December 8, 1954 "interested carriers" met pursuant to a bulletin issued by the Bureau and approved various changes, including an amendment to minimum weight provisions applicable to high explosives, a new rate on steel drums between two Texas points ("for proponent carrier only, or others on request"), provisions limiting the construction of combination rates, and other matters.

Southwestern's section 5a approval became effective on August 22, 1955. Whether or not this approval covered section 22 quotations, the Bureau continued to proceed exactly as before. On November 14, 1955, it issued

an "URGENT" bulletin announcing that a carrier had proposed a rate reduction in Tariff 1000 on ammunition and explosives to meet the rail rate reduction of October 20, adding:

"If there is any carrier who does not wish this amendment to be made for his account, he should advise this office not later than Wednesday, November 16, 1955. Otherwise, publication will be made for account of all carriers." [Emphasis original.]

Reardon of Riss endorsed this "OK." Again, on April 9, 1956, the Bureau advised Tariff 1000 carriers that it was prepared to publish ammunition and explosives rates "in line with the Class 45 and other provisions of the rail publications." Since the response was "inconclusive," and since there was "a difference of opinion as to how publication should be made," the matter was postponed for consideration at a Rate Committee meeting on May 2. Riss did not respond to the original suggestion, being content at the moment with the tenders published in its AEF-5.

On January 27, 1956, the Bureau notified members that rates in "Tariff" 1000 would be increased 7%,

"to correspond with the increases being assessed on other traffic. It is our understanding that the rail lines are in the process of increasing all their tenders by this amount.

"As per our usual procedure, unless there is a carrier who does not wish the increases made effective for his lines we will proceed to make publication..."

Tait noted that "Maguire, Strohfield & Young say to take the 7% increase if all carriers do likewise." He wired Newbold for advice, noting that "Chief lines here inquiring as to Riss action tariff 1000-0 also individual tenders." Newbold wired the Bureau on February 6 that Riss was "agreeable increasing rates on inert commodities however unable agree on explosives rates being increased at this time will advise further later relative explosives."

4. Rocky Mountain Motor Tariff Bureau.

The jurisdiction of this organization extends very roughly over

traffic to, from and within the Rocky Mountain states. It did not receive section 5a approval until 1958.

Rate adjustment activities through this organization paralleled those heretofore described.

Sams of Garrett Freightlines wrote Stone of Riss on April 16, 1952, that he planned to attend the next Rocky Mountain transcontinental rate meeting in St. Louis on April 28-30, and that he would like to call on Riss & Co. on that trip. He added that he hoped Hester of Riss planned to attend the meeting, since he "would like to discuss the matter of U.S. Government Section 22 rate quotations applicable on Government traffic moving from and to points in our territory..." Stone replied that he was "making plans to attend the rate sessions" himself, and that he and Hester would be glad to see Sams in Kansas City though he "would imagine that we will have some conversations while we are in St. Louis."

On May 16, 1952, Strohfield wrote Tait with regard to a suggested rate change. "I know Time-Southwestern and Interstate wants to change rate as you suggested," he noted; "Therefore, will you increase accordingly?" Strohfield added:

"Time-Southwestern Terminal Manager says - last Rocky Mountain rate meeting that they decided on \$3.47 cwt - 25,000 lbs minimum per truck used."

Participants in 43-A agreed to meet in Denver the week of May 26, 1952, to discuss various proposals to increase the rates in that tariff across the board by a fixed percentage. On May 20 Rhodebeck sent to Tait his approval of the idea of a 6% increase, with some reservations. The carriers met in Denver on May 27 and agreed to the increase "subject to rail rates as a maximum." Hester reported:

"All carriers agreed to make similar increases in their individual Section 22 Quotations, effective on August 1st, 1952 and following that effective date to transfer all individual quotations to tariff 43-A."

Hester further reported that there was every indication that all the carriers would go along, and that

"if we find that some carrier has not kept his part of the program, a Quotation will be issued by the Bureau, post dated back to the August 1st date line so that the Military will be protected. "

Riss duly transmitted to Rocky Mountain, on July 1, 1952, a list of its individual section 22 quotations for incorporation into 43-A.

On April 28, 1953, in approving a proposed rate change on a commodity in 43-B, Strohfield commented to Tait that "the only question in my mind is, are other carriers going along with us or will Riss and Time be the only participants... "

There was another round of discussions concerning an across-the-board 9% increase in 43-B in 1953. There had been a general increase of this amount in non-section 22 rates, and on May 14, 1953, the Bureau circulated a proposal to apply the increase to 43-B. (By coincidence, Sams of Garrett had written Tait under the same date to ask whether "any action [was] being taken to increase our government rate tenders applicable on Explosives and/or Ammunition commensurate with approximate 9% increase allowed by the Commission in I. & S. Docket M-4416?") Newbold advised Tait on May 27 that the increase should not be taken on explosives; "inert to be decided later." Strohfield's advice to Tait was to "wait until we see what other carriers will do on individual quotations. Perhaps in 30 days we will want to increase accordingly with all other carriers." Meanwhile, Newbold had called Ryall of P. L. E. to see what that company wanted to do, and was advised that, as Ryall wrote to Bureau that day, --

"We understand that a carrier committee was appointed at Salt Lake City for the purpose of comparing rates in this quotation with basic rail rates so as to avoid the taking of any increase which would make said quotation rates higher than the going rail rates...

"In view of the activity of the above-mentioned committee

this will inform you that no increases are to be made in these rates for our account until such time as we have had an opportunity to study the findings of that committee. "

On May 28 Newbold notified the Bureau that Riss did not concur in the increase as to explosives, nor as to inert freight "pending further study. " On May 29 Ryall wrote Newbold that P. I. E. would be happy to inform Riss of its position after the committee work had been finished. "We are entirely in agreement with you, " replied Newbold.

Reaction to the 9% increase proposal was so varied that the Bureau advised on July 3 that increases in the rates would

"be considered by installments in order that the carriers might have more time to study each particular rate in order to determine whether or not it should be subject to an increase. "

The first group for consideration was to be various freight-all-kinds items, excluding an Item 1377, which "we have been requested not to increase... as those rates are presently on the rail level. " Rhodebeck, asked for his opinion, had grave reservations about any across-the-board increases because of the "involved" section 22 rate situation; he was afraid Riss might price itself out of the business. Strohfield suggested that Riss "go along with DR opers [Denver operators?]" and then "take each item individually & correct it to rail level or meet any other competitive rates by Watson or anyone else. " Rhodebeck had withdrawn his objections when advised that the only matter in question at the moment was the freight-all-kinds rate, since, as he and Newbold decided, "if at a later date any of our competitors did not take this increase, we could always revise our quotation to meet theirs..." Nevertheless, Riss joined in approving the increase on explosives as well, to Rhodebeck's distress.

On June 18, 1953, there was a meeting of the Standing Rate Committee of Rocky Mountain, at which the members considered amending Section 22 so as to apply to commercial bills of lading on which freight was paid by the government. This proposal was declined by the Committee.

5. Southern Motor Carriers Rate Conference.

This organization has jurisdiction over rates to, from, and within the Southeastern states. It received Section 5a approval effective November 5, 1956. It will be recalled that Riss, while not a full member, participated in a number of tariffs.

On November 21, 1952, the Conference gave notice of a proposed general increase of 15% in its Government Rate Sheet 42-A. The party carriers, including Riss, made no objection, and the increase was made effective on December 15.

At a meeting of the General Rate Committee of the Conference in January 1956, it was decided to make a 7% general rate increase in Government Rate Sheet 41-D. The Conference advised that "If objections are expressed as to any rate, then it will be continued for account of all carriers."

The East-South Interterritorial Committee of the Conference met at the same time and decided on blanket increases in Government Rate Sheets 42-C and 45-D. Notice of these decisions were sent out in the same terms.

6. Riss Private Tenders.

From time to time, Riss published in its AEFs and other private tenders supplements which effected blanket percentage increases, as well as supplements inserting new competitive routes at established rates, or which changed individual rates simultaneously over all competing routes.

VII. THE TECHNIQUES OF THE CONSPIRACY:
INDIVIDUAL QUOTATIONS

Individual section 22 quotations submitted by Riss or by Riss and connecting carriers -- including the elaborate, tariff-like AEF series -- were not permitted to disturb the rate structure established through the rate bureaus. Indeed, a principal purpose of these separate tenders, particularly the AEF's, was to avoid a difficulty Riss encountered after its illegal operations in excess of its authority had been stopped by the outcome of the Sub 60TA case. Riss then found it necessary to make interline arrangements

with a number of small local carriers who were unwilling to undertake the expense of joining the necessary rate bureaus. There was no thought on Riss' part that they would be permitted to disarrange the regular rate structure.

For example, Riss tender 807-54 published a rate of \$2.48 per hundred pounds, minimum 30,000 pounds, on projectile parts from Ogden Arsenal, Utah, to Lone Star Ordnance, Texas, and certain other Texas points, routing Garrett to Grand Junction, Colorado; Rio Grande to Denver; Riss to Dallas; East Texas or Red Ball to destination. On September 24, 1956, R. H. Clinton, traffic manager for one of the competitive carriers, wrote Tait pointing out that Rocky Mountain 43-D published in Item 440 a rate of \$2.63. He asked:

"I am wondering if this rate of yours -- 248¢--is subject to a 6% increase or whether that is the actual rate. I certainly do not want to reduce our rate if this information is not correct. Please advice as soon as possible."

On September 25 Tait replied that the rate was \$2.48, but that he had no objection to increasing it to the 43-D level. On September 28 Clinton notified King of Miller & Miller, a competing line, that there was not need to discuss the rate, since Riss had agreed to the increase. Clinton notified Tait on October 3 that the other carriers would not reduce their rate if Riss increased to the 43-D level. On October 12, Tait notified Clinton that the revision was being mailed. On October 16, Clinton transmitted copies of the supplement to 807-54 which effected the increase to Rocky Mountain, Southwestern Transportation, Denver-Amarillo Express, Navajo, Sunset, Whitfield, Miller & Miller, and Yellow Transit, with copy of letter to Riss, advising all that the file on the matter was closed.

Again, Riss quotation 1034-56 published a rate on coins from Denver to various Southern cities via Riss and Hoover. On July 11, 1956, Tait instructed Hess, of Riss at Denver, to call Navajo and ask whether an increase

was to be made per supplement 2 to Rocky Mountain 43-D. On July 11 one R. C., "for Hess," advised Tait that Navajo would increase the rate as of September 10, as would Denver-Chicago and Denver-Amarillo Express. Supplement 1, effective September 10, was shortly issued increasing the Riss rate accordingly.

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C O N C L U S I O N

The widespread and closely organized conspiracy whose genesis, development, and techniques we have described resulted in a catastrophic decline in the railroads' share in the carriage of ammunition and explosives for the United States. By 1954 the motor carriers had discovered that government traffic, and particularly ammunition and explosives traffic, was an attractive field of business. They had established among themselves a "spirit of cooperation" and a sense of purpose in taking this business away from the railroads. They had erected, through established rate bureaus and other devices, an efficient structure whereby all motor carriers competitive in that field could maintain their rates at or below the rail rates, and still maximize their gains over the long run by eliminating any rate competition among themselves. Later still, they organized their own specialized trade association within the American Trucking Associations.

The key to the working of the whole conspiracy during this period was the maintenance of the motor carrier rate structure. The elaborate machinery for making rates public and for insuring motor carrier rate stability and an absence of rate competition, into the operation of which we have here had some glimpses, served a threefold purpose. First, by offering channels through which news of rail rates and the desires of the armed forces could rapidly be passed along to all motor carriers, it ensured that all those carriers would always be aware of the exact maximum level of rates to which they could go without losing business to the railroads. Second, by the methods set up for the rapid dissemination of the rates all carriers had

in effect, it facilitated the maintenance of rates by the industry as a whole. Third, by making possible the suppression of rate competition (the only significant form of competition for government traffic) the conspiracy insured the even distribution of this lucrative business among as many carriers as possible, thus avoiding the weeding-out processes of true competition and guaranteeing that the maximum number of motor carriers would remain in the field against the railroads.

The results were sensational. According to the testimony of Lt. Col. Andrew Paul Flanagan of the Army before the ICC in Ex Parte No. 206, "The rail portion of military ammunition and explosives tonnage dropped from over 90 per cent of the total in early 1950's to a low of only 37 per cent during 1954." This tremendous loss of market share -- all the more painful because it came in the time of the great expansion in ammunition and explosives shipments brought about by the Korean War -- is attributable only to the highly organized conspiracy whose workings we have briefly examined.

The form in which the railroads encountered this conspiracy on the working level was the situation we have so often seen both in this and in our prior memorandum on damages. A railroad offering to carry ammunition from A to B would encounter two, three, or a dozen truckers or combinations of truckers, each of whom offered to perform that service from A to B at the same rate, just at or slightly under the rail rate. These motor carriers were competitive with each other only in the sense that they each offered to perform service the others offered to perform. By agreeing on the rate to be charged -- a rate, of course, just low enough to take the business from the railroads -- they effectively eliminated competition among themselves, for the services followed a rigid policy of dividing traffic equally among the low-rated carriers offering to perform the service. Each trucker was secure in the knowledge that all he had to do to get and keep an aliquot share of business between A and B was to maintain the authority and equipment to perform the service -- and, of course, avoid cutting rates below the established level,

lest he gain a reputation for what Mr. Rhodebeck so pungently referred to as "cheseling." By 1954 there was in existence between almost every shipping and receiving point for ammunition and explosives in the United States such a set of illegal truck routes -- not illegal in the sense that many of Riss' most profitable operations were illegal for want of authority, but illegal in that they were deliberately established for the unlawful purpose of eliminating the railroads as competitors between those points and dividing the business equally among the participating truckers; and illegal in a wider sense as implementing the broad conspiracy among the members of the motor carrier industry to destroy or minimize the competition of the railroads for government explosives throughout the United States. Thus, at hundreds of points the mechanical application of the government routing policy had the effect of diverting ammunition and explosives traffic from the lawful rates and routes established by the railroads against whom the conspiracy was directed and transferring it to the unlawful rates and routes established by the collusive action of motor carriers. We have shown in our memorandum on quantum of damages how great an injury was done the railroads at each such point by the establishment of these illegal rates.

Respectfully submitted,

/s/ STUART S. BALL

Attorneys for Counterclaimants

(Other signatures omitted)

(Certificate of service omitted)

[HEADING OMITTED] Civil Action No. 4056-54 [Filed December 31, 1959]

MOTION FOR SUMMARY JUDGMENT

Now comes the undersigned defendants, by their attorneys, and upon the pleadings, the attached affidavit, the Order Dismissing Action and Complaint as to Certain Defendants and Dismissing Counterclaims Filed by Some of Such Defendants (dated October 27, 1959), the Order Dismissing Action and Complaint as to Defendants (12) Boston and Maine Railroad and (63) The New York, New Haven and Hartford Railroad Company and Dismissing the Counterclaim Filed by Defendant (12) Boston and Maine Railroad (dated November 23, 1959), and other papers on file, move the Court under Rule 56 of the Federal Rules of Civil Procedure for a summary judgment dismissing the complaint against these defendants.

/s/ FRANCIS M. SHEA

Attorneys for Defendants

Nos. (7), (81) and (88)

(Other signatures omitted)

Attorneys for Defendants Nos. (2), (8),
(16), (21), (22), (23), (31), (33), (40),
(41), (65), (70), (72), (76), (78), and (80).

And Attorneys for Defendants Nos. 3, 4, 5

(CERTIFICATE OF SERVICE OMITTED)

[HEADING OMITTED] Civil Action No. 4056-54 [Filed December 31, 1959]

CITY OF WASHINGTON)

DISTRICT OF COLUMBIA) SS:

AFFIDAVIT

RICHARD T. CONWAY, being duly sworn, deposes and says:

That I am an attorney for the defendants (7) Atlantic Coast Line Railroad Company, (81) Southern Railway Company and (88) Seaboard Air Line Railroad Company, in the above-entitled action.

That attached hereto is a copy of a letter, dated December 23, 1959, from Morton A. Brody, attorney for plaintiff Riss & Company, Inc., to Francis

M. Shea, attorney for defendants (7), (81) and (88), and a copy of two enclosures sent with the said letter and constituting: (1) an agreement entered into between Riss & Company, Inc. and the Boston and Maine Railroad, and (2) an agreement entered into between Riss & Company, Inc. and The New York, New Haven and Hartford Railroad Company.

That I have been informed by the said Morton A. Brody and believe that the date on which each of the aforesaid agreements was entered into was the 23rd day of November, 1959.

That I am informed by the said Morton A. Brody and believe that the agreement entered into by Riss & Company, Inc. and the Boston and Maine Railroad was signed by Neal Holland, General Counsel of the Boston and Maine Railroad, on behalf of the Boston and Maine Railroad.

That I have been informed by the said Morton A. Brody and believe that the agreement entered into by Riss & Company, Inc. and The New York, New Haven and Hartford Railroad Company was signed by E. J. Moore, Vice President (Law) of The New York, New Haven and Hartford Railroad Company, on behalf of The New York, New Haven and Hartford Railroad Company.

/s/ Richard T. Conway

Sworn and Subscribed to before me this 31st day of December, 1959

/s/ Elizabeth F. Leonard, Notary Public

COPY Letter on stationery of A. Alvis Layne

December 23, 1959

Francis M. Shea, Esq.
734 - 15th Street, N. W.
Washington 5, D. C.

Re: Riss v. AAR, et al.

Dear Mr. Shea:

I am enclosing a copy of the agreement between Riss & Company and The New York, New Haven & Hartford Railroad Company and the Boston and Maine Railroad Company, as per your request.

Sincerely yours,

/s/ Morton A. Brody

Encls.

(HEADING OMITTED) Civil Action No. 4056-54 Filed Dec. 31, 1959

MOTION FOR LEAVE TO SUPPLEMENT THE ANSWERS

Now comes the undersigned defendants and hereby move the Court, under Rule 15(d) of the Federal Rules of Civil Procedure, for leave to supplement the answers of the respective defendants by adding the following paragraphs:*

FIRST SUPPLEMENTAL DEFENSE

1. In Plaintiff's Statement Respecting "Peripheral Defendants, filed in this cause on October 5, 1959, plaintiff offered to dismiss 31 of the defendants to the complaint from the case, subject to certain conditions including a requirement that such of the 31 defendants as had filed counterclaims against plaintiff must agree to dismiss the said counterclaims simultaneously with their dismissal from the case. This requirement was agreed to by the defendants concerned and an order, dated October 27, 1959, was entered in this cause dismissing the complaint with prejudice as to the 31 defendants and dismissing with prejudice the counterclaims filed by 18 of the said defendants. The said order was consented to in open court by counsel for plaintiff and by counsel for the 31 defendants dismissed from the case.

2. On November 23, 1959, plaintiff, by its President, Richard R. Riss, entered into an agreement with the Boston and Maine Railroad, then a defendant to this cause, in which plaintiff agreed to dismiss with prejudice the complaint as to the Boston and Maine Railroad in consideration of the payment by the Boston and Maine Railroad to plaintiff of \$15,000.00 and the agreement by the Boston and Maine railroad to dismiss with prejudice its counterclaim filed in this cause against plaintiff. In accordance with a stipulation

* As the paragraphs in the answers of the various defendants are not numbered identically, the numbers given the supplemental paragraphs if this motion is granted may vary from defendant to defendant. For present purposes, therefore, the numbers of the proposed supplemental paragraphs commence with number 1. When the supplements to the answers are actually filed, pursuant to leave granted by this Court if leave should be granted, the appropriate numbers will be used by the respective defendants.

and consent by plaintiff and the Boston and Maine Railroad, given in open court pursuant to the aforesaid agreement, an order, dated November 23, 1959, was entered dismissing with prejudice the complaint as to the defendant Boston and Maine Railroad and dismissing with prejudice the counterclaim filed by the defendant Boston and Maine Railroad against plaintiff.

3. On November 23, 1959, plaintiff, by its President, Richard R. Riss, entered into an agreement with The New York, New Haven and Hartford Railroad Company, then a defendant to this cause, in which plaintiff agreed to dismiss with prejudice the complaint as to The New York, New Haven and Hartford Railroad Company in consideration of the payment by The New York, New Haven and Hartford Railroad Company to plaintiff of \$15,000.00. In accordance with a stipulation and consent by plaintiff and The New York, New Haven and Hartford Railroad Company, given in open court pursuant to the aforesaid agreement, an order, dated November 23, 1959, was entered dismissing with prejudice the complaint as to the defendant The New York, New Haven and Hartford Railroad Company.

4. Plaintiff has at all times contended and now contends that the 31 defendants dismissed with prejudice as alleged in paragraph 1 above, and the two defendants dismissed with prejudice as alleged in paragraphs 2 and 3 above, were participants in the conspiracy alleged in the complaint.

5. The dismissals with prejudice of the complaint against 33 alleged co-conspirators, in return for a consideration as stated in paragraphs 1-4 above, constitutes a satisfaction of plaintiff's single cause of action and a retraxit of the cause of action against this defendant as well as against the 33 defendants dismissed from the case. Consequently, plaintiff's cause of action is barred as to all of the alleged co-conspirators including this defendant.

SECOND SUPPLEMENTAL DEFENSE

6. Paragraphs 1-4 above are hereby realleged and incorporated by reference.

7. Plaintiff's injury, if any from the alleged conspiracy has been reduced by the amount of the consideration received by it for agreeing to the dismissal with prejudice of 33 alleged co-conspirators, and must be taken into account in determining the damages, if any, recoverable from this defendant.

8. The value of the 19 counterclaims against plaintiff which were dismissed with prejudice was required by plaintiff in return for dismissal of the complaint as to the counterclaimants were not, have not and cannot be determined except by speculation and conjecture. Consequently, plaintiff cannot prove the amount of its damages, if any, recoverable from this defendant with the certainty required.

THIRD SUPPLEMENTAL DEFENSE

9. Paragraphs 1-4 above are hereby realleged and incorporated by reference.

10. By dismissing the complaint with prejudice as to 33 of the defendants, all of which were alleged to be co-conspirators and joint tortfeasors with this defendant, plaintiff has prevented this defendant from enforcing such right as it may have to obtain contribution by each of the dismissed defendants of its proportionate share of the damages, if any, recovered by plaintiff. In order to avoid this unjust result, the damages recoverable by plaintiff should be reduced by an amount equal to the proportionate share that would have been borne by the 33 dismissed defendants if they had remained as defendants as to the complaint, or, in the alternative, plaintiff's recovery from this defendant should not exceed \$15,000.00

(Signatures omitted)

(Certificate of service omitted)

(HEADING OMITTED) Civil Action No. 4056-54 Filed Jan. 8, 1960

PLAINTIFF'S REPLY TO MOTIONS OF CERTAIN
DEFENDANTS FOR SUMMARY JUDGMENT AND
TO SUPPLEMENT THEIR ANSWERS

(Excerpt)

***The total recovery which may result from dismissal of the Boston & Maine and New Haven is \$30,000. But whether or not Riss may retain any part or all of this recovery can not be determined until after the entry of a final judgment or settlement with the three defendant associations to which these railroads belong.

Riss's agreements with Boston & Maine and New Haven specify, however, that the consideration received from these railroads is a conditional one. Other remaining defendants, after judgment is entered against them, may conceivably have the power to compel a return to Boston & Maine and New Haven by Riss of the "consideration" which Riss received from those two railroads, plus an additional payment under its indemnity agreement. It may therefore ultimately appear that Riss has received no satisfaction of any part of its claim as a result of the payments.

If, after the entry of a final judgment it should appear that Riss would not be compelled to refund all of the money received under those two agreements, Riss would agree that the amount of the final judgment could then be reduced by \$30,000, less any refund to these defendants made as a result of the agreement. There is no legal or factual basis at this time, however, for defendants' raising the question of such a remittitur by a supplemental answer, since the events which will determine the amount of the remittitur have not yet occurred.

(HEADING OMITTED) Civil Action No. 4056-54 Filed March 29, 1960

MEMORANDUM OF OBJECTIONS WITH RESPECT
TO PLAINTIFF'S CHART ENTITLED "RISS
EXPLOSIVES SHIPMENTS AS SHOWN IN REVISED
SCHEDULE B, DEFENDANT RAILROADS' EXPLO-
SIVES SHIPMENTS SHOWN IN THEIR INTERROGATORY
ANSWERS, AND I. C. C. REPORTS"

I.

Defendant The Association of Western Railways and the Western railroad defendants object to plaintiff's chart on the following grounds:

A. The chart is factually inaccurate.

B. There is no justification in this record for the use of the base year 1949 for comparison with transportation performed by plaintiff or by the defendant railroads in the years 1954, 1955, 1956 and 1957.

C. The chart is misleading and inaccurate in the following respects:

1. The chart combines the figures attributable to 27 railroads, each of which serves different territories, handles different quantities of explosives, and has different relationships between commercial explosives and government explosives traffic.

2. The chart gives unequal weight to the performance and experience of the Western railroad defendants in that it combines the results attributable to 19 Western railroads with those attributable to 3 Southern railroads and 5 Eastern railroads; whereas the traffic carried by these defendants is neither necessarily representative of the total traffic in their areas nor are such defendants representative of the total number of railroads in their respective territories, and are combined solely because of the fortuitous circumstance that they are defendants in this case.

3. The chart is misleading in that it includes traffic carried in regions in which plaintiff was not a competitor for explosives business, and hence the results in this chart, including figures relating to areas in which plaintiff did not operate, cannot be used for comparison with charts

showing plaintiff's operating results.

4. The chart is misleading in that a chart of different territories separately stated would produce completely inconsistent results.

5. The chart is wholly false and misleading because, in the base year 1949, the Riss tonnage of 21,790,337 pounds included 8,852,210 pounds which was carried without authority, and the Riss revenue of \$395,079 included \$169,799 resulting from operations which were unauthorized.

6. The chart is misleading in that it purports to show an average of the tonnage in revenue figures for all defendants, whereas in fact the chart does not include any figures for the Missouri-Kansas-Texas Railroad, which was a substantial carrier of explosives in areas in which it is directly competitive with Riss, as shown by Plaintiff's Exhibits 219 and 219 A through L, and which was one of the railroads most affected by motor carrier competition.

II.

With respect to the first objection stated above, that the chart is factually inaccurate, these defendants state that the chart contains the following errors:

A. Errors in Revenue Figures

In response to plaintiff's interrogatories, the following railroads stated the total revenue they derived from ammunition and explosives for all shippers, and further stated that they could not estimate the proportion which was transported for the Government:

Baltimore & Ohio
Chicago, Milwaukee, St. Paul & Pacific
Chicago and North Western
Great Northern
St. Louis-San Francisco
Minneapolis, St. Paul & Sault Ste. Marie (the Soo)

The plaintiff has, as shown by its worksheets, included the entire revenue derived by these railroads from such transportation in constructing

its chart. This is plainly improper.

As these answers to interrogatories also show, only 61% of the ammunition and explosives transported by the Soo in 1954 was carried for the Government, and only 70% of that traffic which it carried in 1955, 76% of that traffic which it carried in 1956, and only 57% of that traffic which it carried in 1957 was transported for the Government. The revenue figure used by the plaintiff is thus grossly inflated in so far as the Soo is concerned.

Similarly, with respect to the North Western, the answers show that only 65% of the traffic which it both originated and delivered was carried for the Government, and only 65% of the traffic it received from connecting carriers and delivered was carried for the Government. Still the plaintiff included every dollar of revenue it received in constructing its graph.

The figures for the Frisco are also inflated by the inclusion of the revenue derived from the 5% of its ammunition and explosives tonnage which was carried for commercial shippers, and the figures for the Great Northern are inflated by the inclusion of revenues derived from the commercial transportation of 10 carloads in 1951 and 59 carloads in 1955.

Furthermore, the Milwaukee and the B. & O. cannot estimate how much of their traffic was for the Government, and the North Western and Great Northern cannot estimate how much of the balance of their traffic was for the Government.

There is no justification for the plaintiff's inclusion in this graph of revenue which it either knows could not have been derived from transportation for the Government or concerning which it has no information whatsoever.

B. Errors in Tonnage Figures

The Western railroads responded to the plaintiff's interrogatories by stating the number of carloads transported by them in each year. Plaintiff did not inform either the Court or the defendants that it deemed these answers inadequate, as it had a right to do under the Federal Rules.

The plaintiff has now attempted to convert these carload figures to

tonnage figures on an entirely fallacious basis.

Commercial shippers of explosives did not in general during the period covered load cars as heavily as does the Government. If there can be any doubt about this fact, an examination of Plaintiff's Exhibit 208 should resolve it:

As that exhibit shows (p. 5, App. B), although the minimum weights for Government shipments have not been below 40,000 pounds, the railroads offer carload rates to commercial shippers on minimum weights as low as 20,000 pounds.

The plaintiff has attempted to convert the carload figures given it to tonnage figures by establishing a conversion factor derived from the total tons handled by each railroad for both Government and commercial traffic and the total carloads handled for both Government and commercial traffic.

Thus, taking the Texas & New Orleans, for example, the plaintiff has derived an average carload figure for 1949 of 28.3 tons or 56,600 pounds per car by dividing a total 7,557 tons by a total 267 cars. In fact, as the plaintiff knows, only 133 of those 267 cars were transported for the Government. Similarly, for 1956, it arrives at an average loading of 26.7 tons or 53,400 pounds by dividing 14,724 tons by 551 carloads, even though it knows that only 336 of the 551 cars were carried for the Government.

By the use of this method, the plaintiff has seriously distorted the tonnage figures applicable to the defendants. Thus, it has arrived at average carload tonnage figures as low as 40,800 pounds in the case of the Soo (by figuring the average tonnage on the basis of 111 cars, only 39 of which were Government freight). At the same time, the plaintiff's counsel has asserted to this Court that the average loading for Government freight was 87,000 pounds and has introduced an exhibit (P. X. 199) showing an average loading on Government ammunition and explosives of 83,000 pounds per car.

The plaintiff's method of converting carloads to tons is clearly improper.

In addition to the fallacious method of converting the carload figures to tonnage, the plaintiff has distorted the tonnage figures used in its chart by using 100% of the Milwaukee's tonnage and 100% of the B. & O.'s tonnage, despite the fact that it has no information as to how much of this tonnage was for the Government; by using 100% of the North Western's tonnage despite the fact that the answers show that a substantial part was not transported for the Government; and that plaintiff has no information concerning the balance.

III.

There is no possible justification for the offer of this inaccurate and distorted chart.

Plaintiff may contend that it is based upon the best information available to it. That is no reason for admitting it in evidence. Every litigant finds that there are things which he would like to show but which cannot be shown because the information is not available.

In this instance the information is not available because this Court found that it would take thousands of hours and cost thousands of dollars to ascertain the necessary facts.

If the Court should admit this exhibit, the only way in the world the defendants could meet it would be to undertake the major part of the kind of study outlined in the affidavits filed with this Court in August, 1959, in connection with certain of plaintiff's interrogatories. Obviously, unless the Court would direct a continuance of the proceedings for several months (which would be inconceivable in a jury trial) there is not time to conduct such a vast undertaking.

The record in this case would therefore contain a major exhibit--clearly wrong in fact--which defendants would have no way whatsoever of meeting. Attacking such an exhibit by cross-examination clearly could not serve to offset the prejudice to defendants resulting from its admission.

(Signature omitted)
Attorneys for Defendant
The Association of Western
Railways and the
Western Railroad Defendants

(HEADING OMITTED) Civil Action No. 4056-54 Filed May 17, 1960

**MOTION OF DEFENDANT (4) EASTERN RAILROAD
PRESIDENTS CONFERENCE TO DISMISS OR FOR
A DIRECTED VERDICT**

Eastern Railroad Presidents Conference moves that the Court dismiss or direct a verdict in its favor under Federal Rules 41(a) and 50(b) on the following grounds:

- (1) Plaintiff has failed to prove that the activities of ERPC were not limited to the advocacy of ideas and without the protection of the First Amendment.
- (2) Plaintiff has failed to prove that it was injured in its business or property as the result of any activity undertaken by or on behalf of ERPC.
- (3) Plaintiff has failed to prove that ERPC participated in or authorized the rate reduction complained of in Paragraph 18 of the Complaint.
- (4) Plaintiff has failed to prove that the rate reduction was not absolutely immunized by the Reed-Bulwinkle Act.
- (5) Plaintiff has failed to prove that the rate reduction constituted an unlawful or destructive competitive practice within the meaning of the National Transportation Policy.
- (6) Plaintiff has failed to introduce any evidence from which a jury could infer that ERPC entered into a conspiracy with any other defendant to obtain a monopoly of general commodities or government explosives traffic, or to eliminate the competition of plaintiff for that traffic.

/s/ C. Brewster Rhoads
Attorney for Eastern Railroad Presidents
Conference

(HEADING OMITTED) Civil Action No. 4056-54 Filed May 17, 1960

MOTION OF DEFENDANT, THE PENNSYLVANIA
RAILROAD COMPANY, TO DISMISS OR FOR
DIRECTED VERDICT

The defendant, The Pennsylvania Railroad Company, hereby moves the Court to dismiss or for directed verdict and as grounds for this motion states as follows:

1. The intent and effect of the railroad rate reductions in 1955 and 1956 form the dominant issue in this case, and the United States Court of Appeals for the District of Columbia has directed this Court not to determine this dominant issue without first referring it to the Interstate Commerce Commission.
2. The plaintiff has introduced no substantial evidence from which it could be inferred that the defendants, or any of them, entered into any conspiracy charged by the plaintiff or which the plaintiff has attempted to prove.
3. Assuming for purposes of argument that the existence of such a conspiracy can be inferred, the plaintiff has introduced no substantial independent evidence from which it could be inferred that this defendant joined such conspiracy or participated therein in any way whatsoever.
4. This defendant incorporates by reference all of the other grounds supporting the motion for directed verdicts filed on behalf of all defendants herein.

/s/ James H. McGlothlin
Attorney for Defendant The Pennsylvania
Railroad Company

(HEADING OMITTED) Civil Action No. 4056-54 Filed May 17, 1960

MOTION OF ALL DEFENDANTS TO DISMISS OR FOR
DIRECTED VERDICT

All defendants hereby move the Court to dismiss or for directed verdicts and as grounds for this motion state as follows:

1. The intent and effect of the railroad rate reductions in 1955 and 1956 form the dominant issue in this case, and the United States Court of Appeals for the District of Columbia has directed this Court not to determine this dominant issue without first referring it to the Interstate Commerce Commission.

2. The plaintiff has introduced no substantial evidence that the defendants, or any of them, entered into a pre-existing conspiracy in violation of the antitrust laws.

3. The acts alleged to have been done pursuant to an alleged pre-existing conspiracy are protected from antitrust liability by the First Amendment to the Constitution of the United States.

4. Attempts to obtain favorable action by Governmental officers or agencies, or by legislatures cannot be attacked under the antitrust statutes, as a matter of law.

5. Publicity upon matters of public interest cannot be attacked under the antitrust statutes, as a matter of law.

6. The plaintiff has introduced no substantial evidence that the defendants, or any of them, engaged in any such alleged act for a predatory and malevolent purpose.

7. The plaintiff has introduced no substantial evidence that any injury, public or private, was caused by the alleged pre-existing conspiracy.

8. The challenged rate reductions are protected from antitrust liability by Section 5a(9) of the Interstate Commerce Act.

9. The plaintiff has introduced no substantial evidence that the challenged rate reductions were made pursuant to any pre-existing combination or conspiracy.

10. The plaintiff has introduced no substantial evidence that the challenged rate reductions were used for the purpose of eliminating competition rather than meeting it, which the Court of Appeals in Atchison, T. & S.F. Ry. Co. v. Aircoach Transport Assn., 102 App. D.C. 355, 253 F.2d 877 (1958), held necessary to defeat the protections of Section 5a (9) of the Interstate Commerce Act.

11. The plaintiff has introduced no substantial evidence that the challenged rate reductions caused any public injury.

12. The plaintiff has introduced no substantial evidence that any act for which the defendants are responsible caused the plaintiff any damage.

13. The plaintiff has established that acts for which no defendant can be held liable, such as ICC decisions, the Korean Armistice, and deficiencies in equipment, impaired its financial position, but has not shown that the effects of such causes cannot be segregated or attempted to segregate them.

14. The plaintiff has not introduced substantial evidence of the amount, if any, of its injury from the alleged conspiracy.

/s/ James H. McGlothlin
Attorney for all Defendants For this
Purpose Only

(HEADING OMITTED) MOTION Civil Action No. 4056-54 Filed May 17, 1960

Pursuant to Rules 41(b) and 50 of the Federal Rules of Civil Procedure, defendant (5) Carl Byoir & Associates moves this Court for a directed verdict or dismissal at the close of the evidence offered by plaintiff herein on the grounds, in addition to those stated in motions filed, or to be filed, by other counsel on behalf of all defendants, that on the facts and the law plaintiff has filed [sic] to make a prima facie showing:

(1) That this defendant did anything other than exercise rights guaranteed and protected by the First Amendment to the Constitution of the United States;

(2) That this defendant was a member of any conspiracy in violation of the antitrust laws as alleged by plaintiff herein; and

(3) That plaintiff was injured by any activity of which this defendant had any part or knowledge.

Respectfully submitted,

/s/ Powell Pierpoint,
Attorney for Defendant (5)
Carl Byoir & Associates

(HEADING OMITTED) Civil Action No. 4056-54 Filed May 19, 1960

**MOTION OF DEFENDANT (3) TRAFFIC EXECUTIVE ASSOCIATION-
EASTERN RAILROADS, FOR A DIRECTED VERDICT AND
FOR DISMISSAL OF THE COMPLAINT**

The defendant, Traffic Executive Association-Eastern Railroads, hereby moves this Court for a directed verdict and for a dismissal of the complaint, pursuant to Rules 41(b) and 50(a) of the Federal Rules of Civil Procedure, and as grounds for this motion states as follows:

1. The plaintiff has introduced no substantial evidence that this defendant had adhered to, entered into, or performed any overt acts on behalf of any conspiracy charged by plaintiff or which plaintiff has attempted to prove.
2. Plaintiff has failed to prove that it suffered any damage as a result of the acts of the conspiracy charged by plaintiff.
3. This defendant incorporates by reference all of the other grounds supporting the motion for directed verdicts filed on behalf of all defendants herein.

/s/ Samuel E. Gates

Samuel E. Gates

Attorneys for Defendant (3) Traffic
Executive Association-Eastern Railroads

(HEADING OMITTED) Civil Action No. 4056-54 Filed May 20, 1960

**MOTION OF DEFENDANT (2) THE ASSOCIATION OF WESTERN RAILWAYS
TO DISMISS OR FOR A DIRECTED VERDICT**

The Association of Western Railways moves that the Court dismiss or direct a verdict in its favor under Federal Rules (41(a) and 50(b) on the following grounds:

- (1) Plaintiff has failed to introduce any evidence from which a jury could infer that AWR entered into a conspiracy with any other defendant to obtain a monopoly of general commodities or government explosives traffic, or to eliminate the competition of plaintiff for that traffic.

- (2) Plaintiff has failed to prove that it was injured in its business or property as the result of any activity undertaken by or on behalf of AWR.

(3) Plaintiff has failed to prove that AWR participated in or authorized the rate reduction complained of in Paragraph 18 of the Complaint.

(4) AWR incorporates by reference all of the other grounds supporting the motion for directed verdict filed on behalf of all defendants herein.

Because the factual matters and legal issues affecting this defendant have been discussed in the memorandum filed on behalf of all defendants and in the memorandum filed on behalf of the Western railroad defendants, this defendant adopts the statements in those memoranda in lieu of filing a separate memorandum.

/s/ STUART S. BALL

(Other Signatures omitted)
Attorneys for Defendant (2) The
Association of Western Railways

(HEADING OMITTED) Civil Action No. 4056-54 Filed June 28, 1960

ORDER

All defendants having filed motions at the close of plaintiff's case, pursuant to Rules 41 and 50 of the Federal Rules of Civil Procedure, to dismiss or for directed verdict, together with memoranda in support of the said motions, and having in open court orally amended the motions to dismiss to include in the alternative a suspension of this proceeding pending a reference to the Interstate Commerce Commission; plaintiff having filed a memorandum in opposition thereto; the Court having heard oral argument on the said motions and opposition, and having fully considered the said motions, and the memoranda and oral argument of the parties, as set forth in its Opinion entered June 6, 1960, it is by the Court this 28th day of June, 1960

ORDERED, that all of the said motions made by defendants at the close of plaintiff's case be, and they hereby are, denied without prejudice to the right of defendants to renew the said motions at the close of all the evidence, and

IT IS FURTHER ORDERED, that all exhibits heretofore introduced by plaintiff may now be received in evidence as against all defendants. The jury

may consider these exhibits against any or all of the defendants giving to them the weight to which they think they are entitled.

/s/ John J. Sirica
United States District Judge

SEEN:

/s/ Robert L. Wright
Counsel for Plaintiff

/s/ Francis M. Shea
Counsel for all defendants for
purposes of this order

(HEADING OMITTED) Civil Action No. 4056-54 Filed July 20, 1960

PLAINTIFF'S PROPOSED INSTRUCTIONS TO THE JURY

(EXCERPTS)

* * *

8. These were the principal overt acts charged in the original Complaint, which was filed on September 22, 1954, and the first issue that you will determine is whether or not there was in existence prior to that date the conspiracy alleged in that Complaint. If you determine that there was no such conspiracy you will return a verdict for the defendants. If you determine that there was such a conspiracy, then you may consider whether or not the overt acts which are the subject of the Supplemental Complaint filed on January 31, 1958 were or were not acts taken pursuant to that conspiracy.

* * *

18. In this case Plaintiff has sought to measure its damages by showing the amount of the injury allegedly sustained to the good will of its business. As you know, good will is an intangible asset which is not carried on the books of any company at a stated dollar value. Its value at any particular time is, therefore, itself the product of an estimate of the earnings prospects of the business in question, and such earnings prospects are normally influenced by the past earnings record of the business.

* * *

20. In estimating such damages you should again bear in mind that no separate injuries to the Plaintiff's good will are claimed as a result of the rate reduction and the prior overt acts alleged to have been used to carry out the conspiracy. If you find from all the evidence that the rate reduction was made pursuant to the conspiracy, in making your estimate you will not attempt to ascertain the extent of injury from the rate reduction, separate from the injury sustained from the prior overt acts. If, on the other hand, you find that the rate reduction was not made pursuant to the pre-existing conspiracy, then you must limit your estimate of the damage to the injury sustained from the acts performed pursuant to the pre-existing conspiracy, to wit, the acts by which the defamatory public relations campaign was carried on.

[HEADING OMITTED]

[Filed August 9, 1960]

OPINION

On December 15, 1954, western railroad defendants (8), (16), (21), (22), (23), (33), (40), (41), (70) and (76) individually filed identical counterclaims against plaintiff Riss & Company which alleged that:

"...Riss, beginning long prior to 1950, instituted a campaign of unfair competitive practices against counterclaimant through the preparation, circulation, and publication of false and malicious statements concerning the transportation of goods by rail. By such practices Riss has caused and induced shippers to divert traffic from counterclaimant which would otherwise have been routed over it."

An identical counterclaim was filed by defendant (78), the Wabash Railroad, on March 24, 1955. These counterclaims were filed by some of the western railroad defendants only and not by the eastern and southern railroad defendants.

In response to a request from the Court, these defendants filed a memorandum on May 9, 1960 setting forth the facts supporting this charge of defamation. This memorandum indicates that defendants rely solely on an article published in a newspaper, the Kansas City Star, on June 4, 1953, more than one year before the complaint in this case was filed and more than 18 months before this counterclaim was filed. All parties have considered these counterclaims as ones sounding in libel and therefore, if independently brought, the counterclaims would be barred by the one year District of Columbia statute of limitations. (D. C. Code § 12-201 (1951); Filson v. Fountain, 90 App. D.C. 273, 274, 197 F.2d 383, 384 (1952); Universal Airline v. Eastern Air Lines, 88 App. D.C. 219, 222, 188 F.2d 993, 996 (1951); Kaplan v. Manhattan Life Ins. Co., 71 App. D.C. 250, 109 F.2d 463 (1939). Defendants, however, contend that the counterclaims can be asserted defensively to reduce plaintiff's claim under the common law doctrine of recoupment alleging that defendants' claim arises out of the same transaction as the plaintiff's.

The single instance of a defamatory statement relied upon by defendants as the basis for their counterclaims is, as previously indicated, an article in the Kansas City Star of June 4, 1953. The first column of the article is headed, in letters of approximately three-eighths of an inch, "Riss Motive Hit," and immediately below in letters of approximately one-eighth of an inch, "Railway Lawyers Charge Trucker with Using Courts to Continue Illegal Carrying," and describes the filing of a reply brief to plaintiff's motion for a new trial in the United States District Court at Kansas City by "attorneys for the Class I railways of the Eastern and Western territories...." The second column of the article is headed, in letters of approximately three-sixteenths of an inch, "Puts Blame on Rails."

This portion of the article purportedly quotes the president of plaintiff company as stating "...it was inconceivable that the railways could allege unfounded statements concerning Riss's authority to transport explosives....[T]he railroads spent millions of dollars and used questionable techniques.... I cannot believe that in the face of our crisis in Korea and the need for ammunition that exists there, that the railroads would ask the government to destroy a transportation facility that is greatly aiding in the war effort solely for reasons of competition, which is actually all their petition states. This action [evidently referring to the filing of the brief mentioned in the earlier column of the article] is tantamount to treason." (Emphasis added).

Even if (without deciding the matter) this counterclaim is not barred by the statute of limitations and may be pleaded defensively under the doctrine of recoupment (See: Sullivan v. Hoover, 6 F.R.D. 513 (D.C. D.C. 1947)), the question still remains as to whether a cause of action in libel is stated. (The Court will assume [without deciding the matter] for purposes of this opinion, that the words "tantamount to treason" are equivalent to a charge of treason, so as to be libelous per se, thus eliminating the necessity of proving special damages (Norfolk & Washington Steamboat Co. v. Davis, 12 App.D.C. 307, 331-32 (1898)). When the alleged defamatory

matter is directed at a class or group (e. g., "the railroads"), rather than at a particular individual, the individual member must show some application of the defamatory matter to himself. 33 Am. Jur. LIBEL & SLANDER §192 (1941); Prosser, Torts §92 (2d ed. 1955 and cases cited therein); Newell, Slander and Libel §220 (4th ed. 1924); Restatement, Torts §564, comment b (1938). The size of the class defamed is a factor considered by the courts in resolving this question. See: Crosby v. Time, Inc., 254 F.2d 927 (7th Cir. 1958) ("top Western officials of the ... Teamsters"); Golden North Airways v. Tanana Pub. Co., 218 F.2d 612 (9th Cir. 1954) (5-10 non-scheduled air carriers); Simpson v. Steen, 127 F.Supp. 132 (D. Utah 1954) (four mine owners); Watts-Wagner Co. v. General Motors Corp., 64 F.Supp. 506 (S.D.N.Y. 1945) (manufacturers and sellers of battery preservers); Noral v. Hearst Publications, 40 Cal. App.2d 348, 104 P.2d 860 (1940) (162 officials of association; Prosser, Torts §92, pp. 583-84 (2d ed. 1955); Note, 34 Colum. L. Rev. 1322, 1325-26 (1934).

In Service Parking Corp. v. Washington Times Co., 67 App.D.C. 351, 92 F.2d 502 (1951), a newspaper article reporting on "the chiseling of parking lot owners and garages" was held not to refer to plaintiff lot owner with sufficient particularity to enable him to bring an action for libel. The class referred to by the article consisted of from twenty to thirty parking lots operated by ten or twelve owners. After reviewing the authorities, Judge Stephens concluded that "The courts have chosen not to limit freedom of public discussion except to prevent harm occasioned by defamatory statements reasonably susceptible of special application to a given individual." (67 App.D.C. at 354-55, 92 F.2d at 505-506, emphasis added.)

In Fowler v. Curtis Pub. Co., 78 F. Supp. 303 (D.C.D.C. 1948), aff'd 182 F.2d 377 (D.C. Cir. 1950), Judge Holtzoff held that an article, illustrated by a photograph of a "Columbia" taxicab, which severely criticized local taxi drivers gave no action in libel to a plaintiff who was one of fifty-nine "Columbia" taxicab drivers.

The principles enunciated by the cases are applicable to the individual railroad counterclaimants here. The article and remarks complained of refer to "the rails", "the railways", "the railroads". In 1954, the Association of American Railroads consisted of one hundred and thirty-one railroads (Transcript of Trial, pp. 5424-49). Assuming that the remarks complained of refer only to railways of the "Eastern and Western territories" mentioned in the first column of the newspaper article, the class concerned is still a large one. In 1954, approximately thirty-seven railroads were members of the Eastern Railroad Presidents' Conference (Plaintiff's exhibit 191A) and approximately sixty-four railroads were members of the Association of Western Railways (Plaintiff's exhibit 189A). There is no mention in the article of any individual railroad. The article does not concern more than railroads as a class or at most the Class I railroads of "the Eastern and Western territories." In the language of the cases, there is no reference to "some ascertained or ascertainable person." (67 App.D.C. at 355, 92 F.2d at 506).

In its earlier reply to these counterclaims, plaintiff contended that they failed to state a claim upon which relief could be granted and asked judgment dismissing them. In its reply to the memorandum filed by defendants in May 1960, plaintiff moved for a directed verdict with costs on the basis of the statute of limitations defense. Pursuant to the provisions of Rule 12(b), Federal Rules of Civil Procedure, the court will treat these motions as Motions for Summary Judgment and will grant Summary Judgment in favor of plaintiff on the counterclaims of defendants (8), (16), (21), (22), (23), (33), (40), (70) and (76), contained in paragraph 21 of their Answers and Counterclaims filed December 15, 1954, and the counterclaim of defendant (78) contained in paragraph 21 of its answer and counterclaim filed March 24, 1955, without costs.

Counsel for plaintiff will prepare an appropriate order.

/s/ John J. Sirica
United States District Judge

August 8, 1960

[HEADING OMITTED] Civil Action No. 4056-54 [Filed August 25, 1960]

ORDER FOR CONFERENCE ON CERTAIN MATTERS AND FOR PRE-TRIAL
CONFERENCE ON ANTI-TRUST COUNTERCLAIMS
OF CERTAIN DEFENDANTS

I

A conference will be held in my courtroom on Friday, September 16, 1960 at 9:30 A.M. The primary subjects will be (a) matters relating to the anti-trust counterclaims filed by certain of the defendants and (b) the possible limitation of evidence relating to the effect on highways of heavy truck traffic.

II

Each counterclaimant will be prepared to state at this conference the specific evidence by which it proposes to show (a) the plaintiff's intent to exclude the counterclaimant from competing for government explosives traffic, (b) the conspiratorial conduct intended to accomplish such an injury and (c) the actual impact of this conduct upon the counterclaimant's ability to compete for such traffic.

III

Because of the possibility of confusion and prejudice which might result from the trial, at this time, of the "price-fixing" counterclaims of certain defendants, the Court is giving serious consideration to ordering a separate trial on such counterclaims under the provisions of Rule 42(b), Federal Rules of Civil Procedure. All counsel will be prepared to discuss this matter at this conference.

IV

The Court has considered the letter, dated August 18, 1960, from Counsel for defendant Eastern Railroad President's Conference to Counsel for plaintiff concerning defendants' evidence with respect to the effect on highways of heavy truck traffic. The Court feels that it may be possible, consistent with justice, to limit the number of witnesses who may testify on these matters. (See, Noerr Motor Freight v. E.R.P.C., 155 F. Supp. 768, 838 (E.D. Pa. 1957).

V

Counsel will submit legal memoranda on the above-mentioned matters not later than Monday, September 12, 1960.

/s/ John J. Sirica

UNITED STATES DISTRICT JUDGE

August 25, 1960

(HEADING OMITTED) Civil Action No. 4056-54 Filed Feb. 8, 1961

REVISED MEMORANDUM OF COUNTERCLAIMANTS

WITH RESPECT TO COUNT II

OF THEIR COUNTERCLAIMS

PREFACE

Counterclaimants have heretofore indicated to the plaintiff much of the documentary material relied upon to establish the alleged price-fixing conspiracy. This memorandum deals principally with materials relating to the fact and amount of damage to the counterclaimants. This memorandum is final and replaces all prior memoranda and supplements.

I

Basis of Claim

Counterclaimants' claim for damages is based upon the profits they would have received from the transportation for the United States of traffic which was illegally diverted to motor carriers by means of the quotation of rates established pursuant to the price-fixing conspiracy charged in the counterclaim.

The determination of the specific claims involved has required an analysis of the motor carrier rates and the rail rates between specific points and a determination of the tonnage transported between those points by motor carrier.

It has been necessary to determine whether evidence was available to show that the particular rates at which particular traffic moved were rates established collectively.

It has also been necessary to determine the applicable rail routes between the specific points involved in the movement, and the rail agreements with respect to the division of revenue from through rates in effect at the time of the movement.

Because the only reliable information concerning the date and volume of government traffic transported by motor carrier between particular

points that is available to counterclaimants, in a practical sense, is Riss Revised Schedule "B" (in evidence as Plaintiff's Exhibits 37 through 37-C), counterclaimants have determined to limit their claim for damages to profits lost on the transportation of Class A and B ammunition and explosives. They have also decided to limit the direct evidence of the amount of their damages to the tonnage transported by Riss, even though the multiplicity of motor carrier routes between points, viewed in the light of the military's routing policies, clearly shows that the unlawful rates complained of resulted in the diversion of far greater amounts of traffic to the participants in the conspiracy.

Furthermore, to reduce the complexities of proof of damages, counterclaimants have decided to limit their claim for damages to the profits lost by railroads serving either the origin or destination with respect to each movement. The originating or delivering rail carriers at each installation are readily ascertainable. Under the policies followed by the military routing authorities, where more than one rail carrier originated or terminated traffic at a particular installation, the total volume of traffic transported by rail was divided approximately equally between them. Because of the multiplicity of possible intermediate carriers, particularly in long movements, the allocation of traffic to intermediate carriers is exceedingly complex. With respect to each movement, therefore, counterclaimants have not attempted to establish directly the profits which would have accrued to intermediate rail carriers.

Counterclaimants have therefore proceeded in the following manner:

With respect to points between which Riss transported a substantial amount of government ammunition and explosives within the limitations period (i. e., since February 18, 1954), they have determined the rates applicable via Riss and other motor carriers, the authority for such rates, and the competing routes over which such rates were applicable. With respect to each pair of points as to which sufficient data were available to show that the motor carrier rate was established pursuant to the conspiracy, counterclaimants

have determined the gross rail revenues which would have resulted had the railroads transported the tonnage carried by Riss. Where a counterclaimant offered to perform service between the same points, as an originating or destination carrier, they have determined the portion of such gross revenue which would have been received by each such counterclaimant. The particular movements for which this process has been completed are set forth in Part III of this memorandum.

In our prior memorandum we described as the last step in the computation of damages the ascertainment of the net profit from a particular movement. This step has not been completed with respect to any particular movement. In that memorandum, for purposes of illustration we used an arbitrary profit factor of 50%. Since the time of that memorandum the defendants have entered upon a meticulous study demonstrating the compensatory nature of the Section 22 rail rates for ammunition and explosives after the reductions of October 1955 and March and April 1956. The cost factors employed in that study will likewise be used in showing the net profit these counterclaimants would have derived from the gross revenues of which the plaintiff and its co-conspirators deprived them. These factors are being calculated for application to any movement of a given tonnage and a given mileage within each territory or between any given territories. This method will allow a much more accurate ascertainment of net profit than we had at first thought possible. At the same time, the factors used will be consistently conservative, both because of the base year chosen and because of the inclusion in our figures of certain fixed costs that might fairly be omitted from calculations involving such incremental traffic as we have here. This study is well along, and will be served on the plaintiff and the Court when ready, as will calculations relating to particular movements with respect to which direct proof of loss of profit is to be made.

II
Participants in the Conspiracy

Since the principal vehicle for carrying out this conspiracy was the group of motor carrier freight bureaus whose operation was described in our earlier memorandum, it is the contention of these counterclaimants that at least all motor carriers who were fellow members in such organizations with Riss & Company and participated in the publication of such rates were co-conspirators of Riss & Company in the fixing of rates. The co-conspirators with Riss who are of particular significance in connection with this counterclaim include Riss's fellow members of these organizations who participated in the publication of such rates on Class A and B ammunition and explosives. This does not mean, however, that Riss and other motor carriers combined only for the limited purpose of fixing rates on Class A and B ammunition and explosives. The combination was in full operation over the entire field of government transportation.

The precise members of the conspiracy who participated in the fixing of the rate between any one pair of points will not necessarily be the same as the members who participated in fixing the rate between another pair of points. Carriers participating with Riss in one or more of the price-fixing arrangements detailed in Part III of this memorandum include the following:

- Adkins Transfer Co., Inc.
- Alabam Freight Lines
- Alamo Motor Lines
- American Transfer & Storage Co., Inc.
- Arkansas Motor Freight Lines, Inc.
- Arrow Express Corp.
- Ashworth Transfer, Inc.
- Bailey's Express
- Barton Truck Line
- BB&I Motor Freight, Inc.

Bee Freight Lines, Inc.
B & M Express, Inc.
B & M Truck Lines
Border Truck Line
Boulder Truck Service, Inc.
Buckingham Transportation, Inc.
Burlington Truckers, Inc.
C.I. Whitten Transfer Co.
Campbell "Sixty-Six" Express, Inc.
Central Freight Lines
Central Trucking
Clemens Truck Lines, Inc.
Consolidated Copperstate Lines
Consolidated Freightways, Inc.
Constructors Transport Co.
Cook Truck Lines
D. C. Hall Transport, Inc.
Decatur Cartage Co.
Delta Freight Line
Denver-Amarillo Express
Denver Chicago Trucking Co., Inc.
Direct Transportation Co.
Doyle Draying
Eastern Utah Transportation Co.
Elliott Freight Lines
El Paso-Pecos Valley Truck Line
Fabacher Transportation Co., Inc.
Falls Cities Transfer & Storage Co., Inc.
Fletcher Freight Lines
Frisco Transportation Co.

Gallagher Freight Lines, Inc.
Gallagher Transfer & Storage
Garrett Freightlines, Inc.
Gillette Motor Transport, Inc.
Goldstein Refrigerator Line
Goldstein Transportation & Storage, Inc.
Gottula Trucking & Transportation Co.
H. A. Day Truck Line
Hayes Freight Lines, Inc.
Herrin Transportation Co.
Hoover Motor Express Co., Inc.
Hughes Transportation Co.
Inland Freight Lines, Inc.
Intercity Freight Lines
Joliet Warehouse & Transfer Co.
Lee Way Motor Freight, Inc.
Lovelace Truck Service, Inc.
Luper Transportation Co. of Oklahoma
M. C. Slater, Inc.
Merchants Fast Motor Lines, Inc.
Merchants Motor Freight, Inc.
Mid-Continent Freight Lines, Inc.
Missouri-Arkansas Transportation Company
M & M Trucking Co.
Navajo Freight Lines
Nevada-California Transportation Co.
New York & New Brunswick Auto Express Co., Inc.
Neylon Bros. Freight Lines
North East Texas Motor Lines, Inc.
Northern Transportation Co.

O. K. Trucking Company
Pacific Intermountain Express Co.
Pacific Motor Trucking Company
Portland-Pendleton Motor Transportation Co.
Pioneer Freight, Inc.
Powell Bros. Truck Lines, Inc.
Red Ball Motor Freight, Inc.
Ringsby Truck Lines, Inc.
Rio Grande Motor Way, Inc.
Robinson Freight Lines
Roy Cartage Co.
Sacramento Freight Lines, Inc.
Salt Lake Transfer Co.
Sites Silver Wheel Freightlines, Inc.
Smith & Soloman Trucking Co.
Southern California Freight Lines
Southern Express
Southern-Plaza Express, Inc.
Southwestern Transportation Company
Southwest Freight Lines
Strickland Transportation Co., Inc.
Sunset Motor Lines
Super Service Motor Freight Co., Inc.
T. I. M. E., Inc.
Tri-State Warehouse & Distributing Co.
Uintah Freight Lines
Union Freightways, Union Transfer Company
United Freight Line
Watson Bros. Transportation Co., Inc.
Wells Cargo, Inc.

Western Truck Lines
West Nebraska Express, Inc.
Wooleyhan Transport Co.
Yellow Transit Freight Lines, Inc.

III

Specific Instances of Rate-Fixing

Counterclaimants claim that shipments shown on Revised Schedule "B" listed in this Part were diverted from them as the result of the unlawful price-fixing alleged in their counterclaims. The prices (rates) unlawfully established by Riss and its co-conspirators are shown in the Section 22 quotations identified with respect to each such shipment, together with the names of the co-conspirators participating in each such rate and the routes over which each such rate was applicable.

INDEX

MOVEMENT		
FROM	TO	PAGES
<u>ARIZONA</u>		
Bellemont	Charlestown-Watson, Ind.	16
Bellemont	De Soto, Kansas	18
<u>ARKANSAS</u>		
Shumaker	Earle, N. J.	20
Shumaker	Port Chicago, Cal.	21
<u>CALIFORNIA</u>		
Fallbrook	McAlester, Okla.	25
Herlong	Charlestown-Watson, Ind.	27
Herlong	De Soto, Kan.	31
Herlong	McAlester, Okla.	34
<u>COLORADO</u>		
Avondale	Charlestown-Watson, Ind.	36
Avondale	De Soto, Kan.	38

FROM	TO	PAGES
Avondale	Fort Riley, Kan.	39
Avondale	Joliet, Ill.	41
Avondale	Lake City, Mo.	43
Avondale	McAlester-Haywood-Savanna, Okla.	44
<u>ILLINOIS</u>		
Joliet	Atlas, Ohio	46
Joliet	Avondale, Colo.	48
Joliet	Barstow (Camp Irwin), Cal.	49
Joliet	Copland, Neb.	51
Joliet	Defense, Tex.	52
Joliet	Firestone, Neb.	54
Joliet	Herlong, Cal.	60
Joliet	Parsons, Kan.	64
<u>INDIANA</u>		
Charlestown-Watson	Avondale, Colo.	66
Charlestown-Watson	Bellefont, Ariz.	68
Charlestown-Watson	Defense, Tex.	71
Charlestown-Watson	Hastings, Neb.	73
Charlestown-Watson	Herlong, Cal.	75
Charlestown-Watson	Houston, Tex.	78
Charlestown-Watson	Lake City, Mo.	80
Charlestown-Watson	McAlester, Okla.	82
Charlestown-Watson	Ordinance, Ore.	84
Charlestown-Watson	Parsons, Kan.	89
Charlestown-Watson	Provo, S. D.	91
Charlestown-Watson	Sidney, Neb.	93
Charlestown-Watson	Warner, Utah	95
Charlestown-Watson	Wingate, N. M.	100
Crane	De Soto, Kan.	102
Crane	Port Chicago, Cal.	103

FROM	TO	PAGES
<u>KANSAS</u>		
De Soto	Atlas, Ohio	106
De Soto	Crane, Ind.	109
De Soto	Indian Head Jct., Md.	111
De Soto	Joliet, Ill.	116
De Soto	Kingsbury, Ind.	117
De Soto	Shumaker, Ark.	118
De Soto	West Burlington, Ia.	123
Fort Riley	Avondale, Colo.	124-A
Parsons	Atlas, Ohio	125
Parsons	Avondale, Colo.	127
Parsons	Bellemont, Ariz.	129
Parsons	Culbertson, Pa.	131
Parsons	Sidney, Neb.	133
Parsons	Warner (Tooele), Utah	136
Parsons	West Burlington, Ia.	139
<u>LOUISIANA</u>		
Doyline	Avondale, Colo.	140
Doyline	Herlong, Cal.	142
<u>MARYLAND</u>		
Edgewood	Ordnance, Ore.	147
Elkton	McAlester, Okla.	148
Indian Head Jct.	De Soto, Kan.	149
Indian Head Jct.	Shumaker, Ark.	150-A
Indian Head Jct.	Thorne, Nev.	152
<u>MISSOURI</u>		
Lake City	Kingsbury, Ind.	156
Lake City	Proving Ground, Ill.	157

FROM	TO	PAGES
<u>NEBRASKA</u>		
Copland	Culbertson, Pa.	158
Firestone	Crane, Ind.	159
Firestone	McAlester, Okla.	161
Firestone	Warner, Utah	163
Hastings	Crane, Ind.	165
Hastings	Culbertson, Pa.	166
Hastings	Earle, N. J.	168
Sidney	Charlestown-Watson, Ind.	170
Sidney	Crane, Ind.	172
Sidney	De Soto, Kans.	174
Sidney	McAlester-Haywood-Savanna, Okla.	176
<u>NEVADA</u>		
Thorne	Charlestown-Watson, Ind.	179
Thorne	Crane, Ind.	182
Thorne	Earle, N. J.	184
Thorne	Indian Head Jct., Md.	186
<u>NEW JERSEY</u>		
Dover	Avondale, Colo.	190
Dover	Thorne, Nev.	191
<u>NEW MEXICO</u>		
Wingate	Parsons, Kan.	195
<u>OHIO</u>		
Atlas	De Soto, Kan.	196
Atlas	Herlong, Cal.	197
Atlas	Provo, S. D.	200
Atlas	Sidney, Neb.	202
Atlas	Warner, Utah	204
Westerville	Hastings, Neb.	207

FROM	TO	PAGES
<u>OKLAHOMA</u>		
McAlester-Haywood-Savanna	Avondale, Colo.	208
McAlester-Haywood-Savanna	Charlestown-Watson, Ind.	210
McAlester-Haywood-Savanna	Port Chicago, Cal.	211
McAlester-Haywood-Savanna	Provo, S. D.	216
McAlester-Haywood-Savanna	Seal Beach, Cal.	218
<u>OREGON</u>		
Ordnance	De Soto, Kan.	221
<u>SOUTH DAKOTA</u>		
Provo	Charlestown-Watson, Ind.	224
Provo	De Soto, Kan.	226
Provo	Parsons, Kan.	227
<u>TENNESSEE</u>		
Holston	Copland, Neb.	229
Holston	Parsons, Kan.	230
Holston	Thorne, Nev.	231-A
<u>VIRGINIA</u>		
Wysor	Copland, Neb.	233
Summary of Gross Revenue Lost By Origin and Destination Counterclaimants		235

Navajo Ordnance Depot, Bellemont, Arizona
to
Indiana Arsenal, Charlestown and Watson, Indiana

Shipments per Revised
Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Oct. 27	1954	61,126	557
Nov. 2, 3	"	152,351	"
Nov. 9, 10	"	91,540	"

The Riss rate was established in Riss Section 22 Quotation No. 710-54 via the following route:

- (1) Denver Chicago Trucking to Denver, Colo.;
Riss & Co. to Jeffersonville, Indiana;
Adkins Transfer Co.

The identical rate was established in Rocky Mountain Motor Tariff Bureau Section 22 Quotation No. 43-C via the following competing routes:

- (2) Denver Chicago Trucking to Denver, Colo.;
Watson Bros. to Chicago, Ill.; Hayes Freight
Lines to Louisville, Ky.; Adkins Transfer Co.
- (3) Denver Chicago Trucking to Denver, Colo.;
Watson Bros. to Chicago, Ill.; Hayes Freight
Lines to Louisville, Ky.; Falls Cities Transfer
& Storage.
- (4) Navajo Freight Lines to Amarillo, Texas;
Lee Way Motor Freight to Oklahoma City, Okla.;
Mid-Continent Freight Lines.
- (5) Alabama Freight Lines to El Paso, Texas;
Gillette Motor Transport to Oklahoma City,
Okla.; Mid-Continent Freight Lines.

The following counterclaimants participated in routes which would have enabled them to perform the service, and offered to perform such service at a through

rate of \$6.2675 per 100 pounds (AAR 14-A):

Santa Fe

Pennsylvania

Under the existing policies of the military establishment and the then applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Santa Fe \$16,631.74

Pennsylvania 1,242.60

Navajo Ordnance, Bellemont, Arizona
to

Sunflower Ordnance, De Soto, Kansas

Shipments per Revised Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
January 25, 26	1955	91,320	426
February 1	1955	91,472	426
February 3	1955	123,660	426

The Riss rate was established in Riss Section 22 Quotation Nos. AEF-1 and 829-55 via the following routes:

(1) Denver-Chicago Trucking Co. to Denver, Colo.;

Riss & Co.

(2) Salt Lake Transfer to Salt Lake City, Utah; Ashworth

Transfer Co. to Denver Colo.; Riss & Co.

The identical rate was established in Rocky Mountain Motor Tariff Bureau Section 22 Quotation No. 43-C via the following competing routes:

(3) Alabam Frt. Lines to El Paso, Tex.; Gillette

Motor Transport to Tulsa, Okla.; American

Transfer & Storage Co.

(4) Denver, Chicago Trucking Co. to Denver, Colo.;

Watson Bros. Trans. Co.

(5) Navajo Frt. Lines to Amarillo, Tex.; Strickland

Transportation Co.

(6) Navajo Frt. Lines to Amarillo, Tex.; Lee Way
Motor Freight.

The following counterclaimants participated in routes which would have enabled them to perform the service, and offered to perform such service at a through rate of \$4.8070 per 100 pounds (AAR No. 14-A):

Atchison, Topeka & Santa Fe

Under the existing policies of the military establishment and the then applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Atchison, Topeka & Santa Fe \$14,731.14

Shumaker (N. A. D.), Arkansas
to

Earle (N. A. D.), New Jersey

Shipments per Revised Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Sept. 17, 18	1954	56,345	322
Sept. 21, 22	1954	96,700	322
Dec. 5	1955	125,950	322

The Riss rate was established pursuant to Riss Section 22 Quotation Nos. 561-54 and AEF-3-ECD via the following route:

- (1) Arkansas Motor Frt. Lines to Kansas City, Mo.;
Riss & Company.

The identical rate was established in Super Service Motor Freight Section 22 Quotation No. 97 via the following competing routes:

- (2) Southwestern Transportation Co., Cook Truck
Lines, Super Service Motor Frt.
- (3) Herrin Transportation Co., Cook Truck Lines,
Super Service Motor Frt.

This route was effective September 27, 1954.

The following counterclaimants participated in routes which would have enabled

them to perform the service, and offered to perform such service at a through rate of \$3.22 per 100 pounds (SWFB No. 1459):

Chicago, Rock Island & Pacific

Pennsylvania Railroad

Under the existing policies of the military establishment and the then applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Chicago, Rock Island & Pacific	\$2,407.62
Pennsylvania Railroad	2,524.40

Shumaker (N. A. D.), Arkansas
to
Port Chicago (N. A. D.), California
Shipments per Revised Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
April 12, 13	1956	173,932	445
June 13, 14	1956	168,190	472
July 19, 20	1956	339,020	472
August 22	1956	154,335	472

The Riss rate was established in Riss Section 22 Quotation No. AEF-2-TC via the following routes:

- (1) Arkansas Motor Frt. Lines to Kansas City, Mo.;
Riss & Co. to Denver, Colo.; Bee Frt. Lines to
Apache, Utah; Eastern-Utah Trans. - Uintah Frt.
Lines to Salt Lake City, Utah; Inland Frt. Lines.
- (2) Arkansas Motor Frt. Lines to Kansas City, Mo.;
Riss & Co. to Denver, Colo.; Pacific Intermountain
Ex.
- (3) Arkansas Motor Frt. Lines to Kansas City, Mo.;
Riss & Co. to Denver, Colo.; Rio Grande Motor Way
to Grand Jct. Colo.; Garrett Frt. Lines to Sacramento,
Calif.; Sacramento Frt. Lines.

- (4) Arkansas Motor Frt. to Kansas City, Mo.; Riss & Co. to Denver, Colo.; Ashworth Transfer to Salt Lake City, Utah; Inland Freight Lines.

The identical rate for the April 12, 13, 1956, movements was established in Rocky Mountain Tariff Bureau Section 22 Quotation No. 43-D via the following competing routes:

- (5) Arkansas Motor Frt. Lines to Kansas City, Mo.; Gillette Motor Transport to El Paso, Tex.; Western Truck Lines to Oakland, Calif.; Doyle Draying Co.
- (6) Arkansas Motor Frt. Lines to Little Rock, Ark.; Strickland Trans. Co. to Dallas, Tex.; Gillette Motor Transport to El Paso, Tex.; Western Truck Lines to Oakland, Calif.; Doyle Draying Co.
- (7) Arkansas Motor Frt. Lines to Little Rock, Ark.; Strickland Trans. Co. to Dallas, Tex.; Sunset Motor Lines to El Paso, Tex.; Western Truck Lines to Oakland, Calif.; Doyle Draying Co.
- (8) Arkansas Motor Frt. Lines to Texarkana, Tex.; Red Ball Motor Frt. to Amarillo, Tex.; Navajo Frt. Lines to Manteca, Calif.; Wells Cargo.
- (9) Herrin Trans. Co. to Dallas, Tex.; Red Ball Motor Frt. to Amarillo, Tex.; Navajo Frt. Lines to Manteca, Calif.; Wells Cargo.
- (10) Herrin Trans. Co. to Dallas, Tex.; Gillette Motor Transport to El Paso, Tex.; Western Truck Lines to Oakland, Calif.; Doyle Draying Co.
- (11) Herrin Trans. Co. to Dallas, Tex.; Gillette Motor Transport to El Paso, Tex.; Western Truck Lines to San Francisco, Calif.; Doyle Draying Co.

- (12) Herrin Trans. Co. to Dallas, Tex.; Sunset Motor Lines to El Paso, Tex.; Western Truck Lines to Oakland, Calif.; Doyle Draying Co.
- (13) Herrin Trans. Co. to Dallas, Tex.; Sunset Motor Lines to El Paso, Tex.; Western Truck Lines to San Francisco, Calif.; Doyle Draying Co.
- (14) Herrin Trans. Co. to Dallas, Tex.; Lee Way Motor Frt. to Amarillo, Tex.; Navajo Frt. Lines to Manteca, Calif.; Wells Cargo.
- (15) Herrin Trans. Co. to Dallas, Tex.; Sunset Motor Lines to Amarillo, Tex.; Navajo Frt. Lines to Manteca, Calif.; Wells Cargo.
- (16) Southwestern Trans. Co. to Dallas, Tex.; Gillette Motor Transport to El Paso, Tex.; Western Truck Lines to Oakland, Calif.; Doyle Draying Co.
- (17) Southwestern Trans. Co. to Dallas, Tex.; Sunset Motor Lines to El Paso, Tex.; Western Truck Lines to Oakland, Calif.; Doyle Draying Co.
- (18) Southwestern Trans. Co. to Dallas, Tex.; Sunset Motor Lines to El Paso, Tex. or San Francisco, Calif.; Doyle Draying Co.
- (19) Southwestern Trans. Co. to Dallas, Tex.; Sunset Motor Lines to Amarillo, Tex.; Navajo Frt. Lines to Manteca, Calif.; Wells Cargo.
- (20) Southwestern Trans. Co. to Dallas, Tex.; Merchants Fast Motor Lines to El Paso, Tex.; Western Truck Lines to Reno, Nev.; Wells Cargo.

The identical rate for the movements June 13 through August 22, 1956, was established in Rocky Mountain Tariff Bureau Section 22 Quotation No. 52 over routes 5 through 20 above and over the following additional

competing routes:

- (21) Arkansas Motor Frt. Lines to Texarkana, Tex.;
Red Ball Motor Frt. to Amarillo, Tex.; Navajo
Frt. Lines to Manteca, Calif.; Cal. Central Truck-
ing Co.
- (22) Arkansas Motor Frt. Lines to Texarkana, Tex.;
Strickland Trans. to Amarillo, Tex.; Navajo Frt.
Lines to Manteca, Calif.; Cal. Central Trucking Co.
- (23) Arkansas Motor Frt. Lines to Little Rock, Ark.;
Strickland Trans. to Amarillo, Tex.; Denver-Amarillo
Express to Denver, Colo.; Goldstein Trans. & Storage
Co. -Ringsby Truck Lines-Inland Frt. Lines.
- (24) Herrin Trans. Co. to Dallas, Tex.; Lee Way Motor
Frt. to Amarillo, Tex.; Navajo Frt. Lines to Manteca,
Calif.; Wells Cargo.
- (25) Herrin Trans. to Dallas, Tex.; Red Ball Motor Frt.
to Amarillo, Tex.; Navajo Frt. Lines to Manteca,
Calif.; Cal-Central Trucking Co.
- (26) Herrin Trans. Co. to Dallas, Tex.; Sunset Motor
Lines to Amarillo, Tex.; Navajo Frt. Lines to Manteca,
Calif.; Cal-Central Trucking Co.
- (27) Strickland Trans. Co. to Amarillo, Tex.; Denver, -
Amarillo Express to Denver, Colo.; Garrett Frt. Lines -
Rio Grande Motor Way to Sacramento, Calif.; Sacramento
Frt. Lines.
- (28) Southwestern Trans. Co. to Dallas, Tex.; Red Ball
Motor Frt. Line to Amarillo, Tex.; Navajo Frt. Lines
to Manteca, Calif.; Cal-Central Trucking Co.
- (29) Southwestern Trans. Co. to Dallas, Tex.; Sunset Motor
Lines to Amarillo, Tex.; Navajo Frt. Lines to Manteca,
Calif.; Cal-Central Trucking Co.

(30) Southwestern Trans. Co. to Dallas, Tex.; Merchants
Fast Motor Lines to Lubbock, Tex.; T. I. M. E. to
Azusa, Calif.; Constructors Transport Co.

The following counterclaimants participated in routes which would have enabled them to perform the service, and offered to perform such service at a through rate of \$5.68 per 100 pounds (WTA No. 76):

Chicago, Rock Island & Pacific
Atchison, Topeka & Santa Fe
Southern Pacific

Under the existing policies of the military establishment and the then applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Chicago, Rock Island & Pacific	\$ 9,313.07
Atchison, Topeka & Santa Fe	15,838.13
Southern Pacific	12,990.83

Fallbrook, California
to
McAlester (N. A. D.) Oklahoma
Shipments per Revised Schedule B

<u>Date</u>	<u>Quantity</u>	<u>Rate</u>
July 19, 20, 21, 22, 23 1954	158,341	420
July 26, 27, 28 1954	71,292	420

The Riss rate was established in Riss Section 22 Quotation No. 480-54 via the following route:

(1) Southern Cal. Frt. Lines to Los Angeles, Calif.;
Pacific Intermountain Express to Denver, Colo;
Riss & Co.

The identical rate was established in Rock Mountain Motor Tariff Bureau Section 22 Quotation No. 43-C via the following competing routes:

(2) Constructors Transport Co. to Los Angeles, Calif.;
Navajo Frt. Lines to Amarillo, Tex.; Yellow Transit
Frt. Lines.

- (3) Southern Cal. Frt. Lines to Los Angeles, Calif.;
Navajo Frt. Lines to Amarillo, Tex.; Lee Way
Motor Frt. to Oklahoma City, Okla.; Luper Trans.
of Okla.
- (4) Southern Cal. Frt. Lines to Los Angeles, Calif.;
Western Truck Lines to El Paso, Tex.; Gillette
Motor Transport, Inc.
- (5) Southern Cal. Frt. Lines to Los Angeles, Calif.;
Navajo Frt. Lines to Amarillo, Tex.; Yellow
Transit Frt. Lines.
- (6) Southern Cal. Frt. Lines to Los Angeles, Calif.;
Consolidated Copperstate Lines to Phoenix, Ariz.;
Alabam Frt. Lines to El Paso, Tex.; Southern-Plaza
Express to Durant, Okla.; Elliott Frt. Lines.

Effective July 26, 1954, the following route was added:

- (7) Constructors Transport Co. to Los Angeles, Calif.;
Western Truck Lines to El Paso, Tex.; Gillette Motor
Transport, Inc.

The following counterclamants participated in routes which would have enabled them to perform the service, and offered to perform such service at a through rate of \$5.3705 per 100 pounds (AAR No. 14-A):

Atchison, Topeka & Santa Fe
Chicago, Rock Island & Pacific
Missouri-Kansas-Texas

Under the existing policies of the military establishment and the then applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Atchison, Topeka & Santa Fe	\$8,817.69
Chicago, Rock Island & Pacific	2,404.83
Missouri-Kansas-Texas	1,109.92

Sierra Ordnance, Herlong, California
to
Indiana Ordnance, Charlestown-Watson, Indiana
Shipments per Revised Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Feb. 25, 26, 27	1957	149, 184	607
Mar. 4, 5, 6, 7	1957	151, 335	607

The Riss rate was established in Uintah Freight Lines Section 22 Quotation No. 41 via the following route:

- (1) Wells Cargo to Reno, Nev.; Inland Freight Lines to Salt Lake City, Utah; Bee Freight Lines-Eastern Utah Transfer, Uintah Freight Lines to Denver, Colo.; Riss & Co. to Jeffersonville, Ind.; Adkins Transfer Co.

The identical rate was established in Rocky Mountain Motor Tariff Bureau Section 22 Quotation No. 52 via the following competing routes:

- (2) Wells Cargo to Reno, Nev.; Ashworth Transfer to Denver, Colo.; Watson Bros. to Chicago, Ill.; Hayes Freight Lines to Louisville, Ky.; Adkins Transfer Co.
- (3) Wells Cargo to Reno, Nev.; Northern Trans. Co. to Salt Lake City, Utah; Gallagher Transfer & Storage Co. to Denver, Colo.; Watson Bros. to Chicago, Ill.; Hayes Freight Lines to Louisville, Ky.; Adkins Transfer Co.
- (4) Wells Cargo to Reno, Nev.; Ringsby Truck Lines-Goldstein Refrigerator Lines to Denver, Colo.; Watson Bros. to Chicago, Ill.; Hayes Freight Lines to Louisville, Ky.; Adkins Transfer Co.

- (5) Wells Cargo to Reno, Nev.; Ashworth Transfer to Denver, Colo.; Watson Bros. to Peoria, Ill.; Hayes Freight Lines to Louisville, Ky.; Adkins Transfer Co.
- (6) Wells Cargo to Reno, Nev.; Northern Trans. Co. to Salt Lake City, Utah; Gallagher Transfer & Storage Co. to Denver, Colo.; Watson Bros. to Peoria, Ill.; Hayes Freight Lines to Louisville, Ky.; Adkins Transfer Co.
- (7) Wells Cargo to Reno, Nev.; Northern Trans. Co. to Salt Lake City, Utah; Gallagher Transfer & Storage Co. to Denver, Colo.; Watson Bros. to St. Louis, Mo.; Hayes Freight Lines to Louisville, Ky.; Adkins Transfer Co.
- (8) Wells Cargo to Reno, Nev.; Goldstein Refrigerator-Ringsby Lines to Denver, Colo.; Watson Bros. to Peoria, Ill.; Hayes Freight Lines to Louisville, Ky.; Adkins Transfer Co.
- (9) Wells Cargo to Reno, Nev.; Goldstein Trans. & Storage-Ringsby Truck Lines to Denver, Colo.; Watson Bros. to St. Louis, Mo.; Hayes Freight Lines to Louisville, Ky.; Adkins Transfer Co.
- (10) Sacramento Frt. Lines to Sacramento, Calif.; Consolidated Freightways to Chicago, Ill.; Adkins Transfer Co.
- (11) Wells Cargo to Reno, Nev.; Ashworth Transfer to Denver, Colo.; Watson Bros. to Chicago, Ill.; Hayes Freight Lines to Louisville, Ky.; Falls Cities Transfer & Storage Co.

- (12) Wells Cargo to Reno, Nev.; Northern Trans. Co. to Salt Lake City, Utah; Gallagher Transfer & Storage Co. to Denver, Colo.; Watson Bros. to Chicago, Ill.; Hayes Freight Lines to Louisville, Ky.; Falls Cities Transfer & Storage Co.
- (13) Wells Cargo to Reno, Nev.; Goldstein Refrigerator-Ringsby Truck Lines to Denver, Colo.; Watson Bros. to Chicago, Ill.; Hayes Freight Lines to Louisville, Ky.; Falls Cities Transfer & Storage Co.
- (14) Wells Cargo to Reno, Nev.; Ashworth Transfer to Denver, Colo.; Watson Bros. to Peoria, Ill.; Hayes Freight Lines to Louisville, Ky.; Falls Cities Transfer & Storage Co.
- (15) Wells Cargo to Reno, Nev.; Ashworth Transfer to Denver, Colo.; Watson Bros. to St. Louis, Mo.; Hayes Freight Lines to Louisville, Ky.; Falls Cities Transfer & Storage Co.
- (16) Wells Cargo to Reno, Nev.; Northern Trans. Co. to Salt Lake City, Utah; Gallagher Transfer & Storage Co. to Denver, Colo.; Watson Bros. to Peoria, Ill.; Hayes Freight Lines to Louisville, Ky.; Falls Cities Transfer & Storage Co.
- (17) Wells Cargo to Reno, Nev.; Northern Trans. Co. to Salt Lake City, Utah; Gallagher Frt. Lines to St. Louis, Mo.; Hayes Freight Lines to Louisville, Ky.; Falls Cities Transfer & Storage Co.
- (18) Wells Cargo to Reno, Nev.; Goldstein Trans. & Storage Co. -Ringsby Truck Lines to Peoria, Ill.; Hayes Freight Lines to Louisville, Ky.; Falls Cities Transfer & Storage Co.

- (19) Wells Cargo to Reno, Nev.; Goldstein Trans. & Storage-Ringsby Truck Lines to St. Louis, Mo.; Hayes Freight Lines to Louisville, Ky.; Falls Cities Transfer & Storage Co.
- (20) Wells Cargo to Manteca, Calif.; Navajo Frt. Lines to Amarillo, Texas; Lee Way Motor Frt. to Oklahoma City, Okla.; Mid Continent Frt. Lines.
- (21) Constructors Transport to Azusa, Calif.; T. I. M. E. to Oklahoma City, Okla.; Mid Continent Frt. Lines.
- (22) Nevada-California Trans. Co. to Reno, Nev.; Western Truck Lines to El Paso, Texas; Gillette Motor Transport to Oklahoma City, Okla.; Mid Continent Frt. Lines.

The following counterclaimants participated in routes which would have enabled them to perform the service, and offered to perform such service at a through rate of \$6.37 per 100 pounds (TCFB No. 244):

Southern Pacific

Pennsylvania Railroad

Under the existing policies of the military establishment and the then applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Southern Pacific \$3,761.62

Pennsylvania Railroad 1,579.30

Sierra Ordnance Depot, Herlong, California
to

Sunflower Ordnance Depot, De Soto, Kansas
Shipments per Revised Schedule B

"A"

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
June 2, 3, 4,	1954	183,960	504
June 8	1954	90,740	504

"B"

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
April 12, 13	1956	129,353	444

The Riss rate applicable during the period of the "A" movements was established in Riss Section 22 Quotation Nos. 482-54 and AEF-1 via the following routes:

- (1) Wells Cargo to Reno, Nev.; Pacific Intermountain Express to Denver, Colo.; Riss & Co.
- (2) Wells Cargo to Reno, Nev.; Ashworth Transfer Co. to Denver, Colo.; Riss & Co.

This route was effective October 1, 1954.

The identical rate applicable during the period of the "A" movements was established in Watson Bros. Section 22 Quotation No. 938 via the following competing route:

- (3) Wells Cargo, Inc., to Reno, Nev.; Inland Frt. Lines to Salt Lake City, Utah; Ashworth Transfer Co. to Denver, Colo.; Watson Bros. Transportation Co.

The identical rate was also established in Rocky Mountain Motor Tariff Bureau Section 22 Quotation No. 43-C via the following competing routes:

- (4) Wells Cargo to Reno, Nev.; Ashworth Transfer Co. to Denver, Colo.; Watson Bros. Trans. Co.
- (5) Wells Cargo to Reno, Nev.; Northern Trans. Co. to Salt Lake City, Utah; Gallagher Transfer & Storage Co. to Denver, Colo.; Watson Bros. Trans. Co.
- (6) Wells Cargo to Reno, Nev.; Northern Trans. Co. to Salt Lake City, Utah, Ringsby Truck Lines to Craig, Colo.; Boulder Truck Service to Denver, Colo.; Watson Bros. Trans. Co.

This route was effective until November 1, 1954.

- (7) Constructors Transport Co. to Manteca, Calif.; Navajo Frt. Lines to Amarillo, Tex.; Lee Way Motor Freight.

This route was effective July 26, 1954.

- (8) Wells Cargo to Manteca, Calif.; Navajo Frt. Lines to Amarillo, Tex.; Lee Way Motor Frt.

This route was effective July 26, 1954.

- (9) Nevada-California Trans. Co. to Reno, Nev.; Western Truck Lines to El Paso, Tex.; Gillette Motor Transport to Tulsa, Okla.; American Transfer & Storage Co.

This route was effective August 9, 1954.

The Riss rate applicable during the period of the "B" movement was established in Riss Section 22 Quotation No. AEF-4-TC via the following routes:

- (10) Wells Cargo to Reno, Nev.; Pacific Intermountain Express to Denver, Colo.; Riss & Co.
(11) Wells Cargo to Reno, Nev.; Ashworth Transfer Co. to Denver, Colo.; Riss & Co.

This route was effective October 1, 1954.

- (12) Wells Cargo to Reno, Nev.; Inland Frt. Lines to Salt Lake City, Utah; Uintah Frt. Lines-Eastern Utah Trans. Co. to Apache, Utah; Bee Frt. Lines to Denver, Colo.; Riss & Co.

The identical rate applicable during the period of the "B" movement was established in Rocky Mountain Motor Tariff Bureau Section 22 Quotation No. 43-D via the following competing routes:

- (13) Nevada-California Trans. Co. to Reno, Nev.; Western Truck Lines to El Paso, Tex.; Gillette Motor Transport to Tulsa, Okla.; American Transfer & Storage Co.

This route was effective August 9, 1954.

- (14) Wells Cargo to Reno, Nev.; Ashworth Transfer Co.
to Denver, Colo.; Watson Bros. Trans. Co.
- (15) Wells Cargo to Reno, Nev.; Northern Trans. Co. to
Salt Lake City, Utah; Gallagher Transfer & Storage
Co. to Denver, Colo.; Watson Bros. Trans. Co.
- (16) Wells Cargo to Reno, Nev.; Northern Trans. Co. -
Ringsby Truck Lines-Goldstein Refrigerator Line
to Denver, Colo.; Watson Bros. Trans. Co.

The following counterclaimants participated in routes which would have enabled them to perform the service, and offered to perform such service at a through rate during the "A" period of \$5.244 per 100 pounds (AAR No. 14-A) and during the "B" period a through rate of \$4.71 per 100 pounds (WTA No. 76):

Atchison, Topeka & Santa Fe

Southern Pacific

Under the existing policies of the military establishment and the then applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Atchison, Topeka & Santa Fe:	\$4,386.53
Southern Pacific	4,765.73

Sierra Ordnance Depot, Herlong, California
to

McAlester (N. A. D.) Haywood and Savanna, Oklahoma
Shipments per Revised Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
March 13	1955	60,032	420
March 16	1955	90,048	420
March 18	1955	90,048	420

The Riss rate was established in Riss Section 22 Quotation Nos. AEF-1 and AEF-2-TC via the following routes:

- (1) Wells Cargo to Reno, Nev.; Pacific Intermountain
Express to Denver, Colo.; Riss & Co.

- (2) Wells Cargo to Reno, Nev.; Ashworth Transfer Co. to Denver, Colo.; Riss & Co.
- (3) Wells Cargo to Reno, Nev.; Garrett Freight Lines to Grand Jct., Colo.; Rio Grande Motor Way to Denver, Colo.; Riss & Co.
- (4) Wells Cargo to Reno, Nev.; Inland Frt. Lines to Salt Lake City, Utah; Uintah Frt. Lines-Eastern Utah Trans. Co. to Apache, Utah; Bee Frt. Lines to Denver, Colo.; Riss & Co.

The identical rate was established in Rocky Mountain Motor Tariff Bureau Section 22 Quotation Nos. 43-C and 44-D via the following competing routes:

- (5) Constructors Transport Co. to Manteca, Calif.; Navajo Frt. Lines to Amarillo, Tex.; Lee Way Motor Frt. to Oklahoma City, Okla.; Luper Trans. of Okla.
- (6) Constructors Transport Co. to Azusa, Calif.; T. I. M. E. to Oklahoma City, Okla.; Luper Trans. of Okla.
This route was effective March 14, 1955.
- (7) Nevada-California Trans. to Reno, Nev.; Western Truck Lines to El Paso, Tex.; Gillette Motor Transport.
- (8) Nevada-California Trans. Co. to Reno, Nev.; Western Truck Lines to El Paso, Texas; Merchants Fast Motor Lines to Dallas, Tex.; Luper Trans. of Okla.
- (9) Wells Cargo to Manteca, Calif.; Navajo Frt. Lines to Amarillo, Tex.; Lee Way Motor Frt. to Oklahoma City, Okla.; Luper Trans. of Okla.

(10) Wells Cargo to Manteca, Calif.; Navajo Frt. Lines to Amarillo, Texas; Lee Way Motor Frt. to Oklahoma City, Okla.; H. A. Day Truck Line.

The identical rate was also established in Southern-Plaza Express Section 22 Quotation No. 54-21 via the following competing route:

(11) Constructors Transport to Los Angeles, Calif.; Consolidated Copperstate Lines to Phoenix, Ariz.; Alabama Frt. Lines to El Paso, Texas; Southern-Plaza Express to Atoka, Okla.; Elliott Frt. Lines.

The following counterclaimants participated in routes which would have enabled them to perform the service, and offered to perform such service at a through rate of \$4.8760 per 100 pounds (AAR 14-A):

Southern Pacific
Chicago, Rock Island & Pacific
Missouri-Kansas-Texas

Under the existing policies of the military establishment and the then applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Southern Pacific	\$2,505.65
Chicago, Rock Island & Pacific	2,043.16
Missouri-Kansas-Texas	1,170.86

Pueblo Ordnance Depot, Avondale, Colorado
to
Indiana Arsenal, Charlestown or Watson, Indiana
Shipments per Revised Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
March 30	1954	52,976	296
		<u>"A"</u>	
Oct. 19	1954	59,895	296
Oct. 29, 30	1954	88,815	296
		<u>"B"</u>	

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Nov. 2, 3	1954	86,392	296
Nov. 6	1954	59,822	296
Nov. 8, 9, 10	1954	209,047	296
Nov. 12	1954	59,806	296
Nov. 19, 20	1954	89,602	296
Nov. 22, 23, 24	1954	119,100	296
Nov. 29, 30	1954	59,606	296
Dec. 1, 2, 3	1954	118,971	296
Dec. 8, 9, 10	1954	119,182	296
Dec. 17	1954	119,232	296
Dec. 21, 22, 23, 24	1954	178,848	296
Dec. 28, 29, 30, 31	1954	147,087	296
June 6	1955	55,413	296
Aug. 29, 30, 31	1955	236,535	296
Sept. 1, 2	1955	117,750	296
Sept. 6, 7, 8, 9, 10	1955	206,692	296

The Riss rate for the "A" period was established in Riss Section 22 Quotation No. 533-54 and for the "B" period in Riss Section 22 Quotation Nos. AEF-1, AEF-3-ECD, and AEF-5-ECD via:

(1) Direct Riss route.

The identical rate for other motor carriers for the "A" and "B" periods was established in Watson Bros. Section 22 Quotation No. 1000 over the following competing route:

(2) Gottula Trucking & Transportation Co. to Pueblo, Colorado; Watson Bros. to Peoria, Illinois or St. Louis, Missouri; Hayes Freight Lines to Louisville, Kentucky; Falls Cities Transfer & Storage Co.

The following counterclaimants participated in routes which would have

enabled them to perform this service, and offered to perform such service at a through rate of \$3.68 per 100 pounds (AAR No. 14-A) during the "A" period and at a rate of \$2.96 per 100 pounds (WTL No. 854) during the "B" period:

Pennsylvania Railroad
Atchison, Topeka & Santa Fe
Missouri Pacific

Under the existing policies of the military establishment and the then applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Pennsylvania Railroad	\$8,944.47
Atchison, Topeka & Santa Fe	25,044.49
Missouri Pacific	22,117.22

Pueblo Ordnance Depot, Avondale, Colorado
to
Sunflower Ordnance Depot, De Soto, Kansas

Shipments per Revised Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Feb. 14, 15, 16, 17	1956	209,672	202

The Riss rate was established in Riss Section 22 Quotation No. AEF-5-ECD via:

(1) Direct Riss service.

The identical rate was established in Watson Bros. Section 22 Quotation No. 1000 via the following competing route:

(2) Gottula Trucking & Transportation Co. to Pueblo,
Colo.; Watson Bros.

The following counterclaimants participated in routes which would have enabled them to perform the service, and offered to perform such service at a through rate of \$2.10 per 100 pounds (WTA No. 76):

Atchison, Topeka & Santa Fe
Missouri Pacific

Under the existing policies of the military establishment and the then applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Atchison, Topeka & Santa Fe	\$2,862.02
Missouri Pacific	1,541.09

Pueblo Ordnance Depot, Avondale, Colorado
to
Fort Riley, Kansas

Shipments per Revised
Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
May 27, 28	1954	76,630	203
June 4	"	51,738	"
July 2	"	63,530	"
Aug. 16, 17	"	86,311	"
Sept. 22, 23	"	75,486	"
Jan. 8, 10	1955	92,456	"
March 7	"	51,118	"
April 20, 21, 22	"	367,093	"
April 25, 26	"	88,290	"
May 10, 11	"	54,438	"
July 12	"	53,750	"
Sept. 13	"	61,813	"

1,125,653

The Riss rate was established in Riss Section 22 Quotation No. 484-54, AEF-1 and AEF-3-ECD for direct Riss service.

The identical rate was established in Watson Bros. Section 22 Quotation No. 1000 effective September 1, 1953 through September 30, 1954 over the following competing route:

enabled them to perform this service, and offered to perform such service at a through rate of \$3.68 per 100 pounds (AAR No. 14-A) during the "A" period and at a rate of \$2.96 per 100 pounds (WTL No. 854) during the "B" period:

Pennsylvania Railroad
Atchison, Topeka & Santa Fe
Missouri Pacific

Under the existing policies of the military establishment and the then applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Pennsylvania Railroad	\$8,944.47
Atchison, Topeka & Santa Fe	25,044.49
Missouri Pacific	22,117.22

Pueblo Ordnance Depot, Avondale, Colorado
to
Sunflower Ordnance Depot, De Soto, Kansas
Shipments per Revised Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Feb. 14, 15, 16, 17	1956	209,672	202

The Riss rate was established in Riss Section 22 Quotation No. AEF-5-ECD via:

(1) Direct Riss service.

The identical rate was established in Watson Bros. Section 22 Quotation No. 1000 via the following competing route:

(2) Gottula Trucking & Transportation Co. to Pueblo,
Colo.; Watson Bros.

The following counterclaimants participated in routes which would have enabled them to perform the service, and offered to perform such service at a through rate of \$2.10 per 100 pounds (WTA No. 76):

Atchison, Topeka & Santa Fe
Missouri Pacific

Under the existing policies of the military establishment and the then applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Atchison, Topeka & Santa Fe	\$2,862.02
Missouri Pacific	1,541.09

Pueblo Ordnance Depot, Avondale, Colorado
to
Fort Riley, Kansas

Shipments per Revised
Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
May 27, 28	1954	76,630	203
June 4	"	51,738	"
July 2	"	63,530	"
Aug. 16, 17	"	86,311	"
Sept. 22, 23	"	75,486	"
Jan. 8, 10	1955	92,456	"
March 7	"	51,118	"
April 20, 21, 22	"	367,093	"
April 25, 26	"	88,290	"
May 10, 11	"	54,438	"
July 12	"	53,750	"
Sept. 13	"	61,813	"

1,125,653

The Riss rate was established in Riss Section 22 Quotation No. 484-54, AEF-1 and AEF-3-ECD for direct Riss service.

The identical rate was established in Watson Bros. Section 22 Quotation No. 1000 effective September 1, 1953 through September 30, 1954 over the following competing route:

- (1) Gottula Trucking & Transportation to Pueblo,
Colo.; Watson Bros. to Kansas City, Mo.; Yellow
Transit Freight Lines to Ft. Riley, Kansas.

The identical rate was also established for the sixty participants in Section 2 of Middlewest Motor Tariff Bureau Section 22 Quotation No. 303-E, effective December 10, 1954 to April 18, 1956.

The following counterclaimants participated in routes which would have enabled them to perform this service, and offered to perform such service at a through rate of \$2.2195 per cwt. (AAR Quotation No. 14-A):

Atchison, Topeka & Santa Fe
Missouri Pacific
Union Pacific

Under the existing policies of the military establishment and the then applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

AT&SF	\$8,318.46
Mo. Pac.	8,318.47
U. P.	7,829.14

Pueblo Ordnance, Avondale, Colorado
to
Joliet Arsenal, Joliet or Elmwood, Illinois
Shipments per Revised Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Nov. 9, 10	1954	89,646	283
Nov. 12	1954	57,620	283
Nov. 16	1954	172,860	283
Nov. 18	1954	57,620	283

The Riss rate was established in Riss Section 22 Quotation No. AEF-1 via:

- (1) Direct Riss route.

The identical rate for other motor carriers was established in Watson Bros. Section Quotation No. 1000 via the following competing routes:

- (2) Gottula Trucking and Transportation Co. to Pueblo, Colorado; Watson Bros. to Chicago, Illinois; Roy Cartage.
- (3) Gottula Trucking and Transportation to Pueblo, Colorado; Watson Bros. to Chicago or Peoria, Illinois, or St. Louis, Missouri; Hayes Freight Lines.

The following counterclaimants participated in routes which would have enabled them to perform this service, and offered to perform such service at a through rate of \$3.45 (AAR No. 14-A):

Atchison, Topeka & Santa Fe
Missouri Pacific
Chicago, Milwaukee, St. Paul & Pacific
Wabash

Under the existing policies of the military establishment and the then applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Atchison, Topeka & Santa Fe	\$5,278.06
Missouri Pacific	4,007.42
Chicago, Milwaukee, St. Paul & Pacific	1,270.64
Wabash	1,238.06

Pueblo Ordnance Depot, Avondale, Colorado
to
Lake City Ordnance Depot, Lake City, Missouri

Shipments per Revised
Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
March 3	1955	58,601	248
March 11	"	57,983	"
March 16	"	59,432	"
March 23	"	59,573	"

The Riss rate was established in Riss Section 22 Quotation No. AEF-1 and AEF-3-ECD via the following route:

- (1) Direct Riss service.

The identical rate was established in Watson Bros. Section 22 Quotation No. 1000 via the following competing route:

- (2) Gottula Trucking and Transportation Co. to Pueblo, Colo.; Watson Bros. to Kansas City, Mo.; Intercity Freight Lines.

The following counterclaimants participated in routes which would have enabled them to perform the service, and offered to perform such service at a through rate of \$2.48 per 100 pounds (WTL No. 846):

Santa Fe

Missouri Pacific

Under the existing policies of the military establishment and the then applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Santa Fe	\$2,190.98
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Missouri Pacific	3,651.63
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Pueblo Ordnance, Avondale, Colorado
to
McAlester NAD, Haywood and Savanna, Oklahoma

Shipments per Revised Schedule B

"A"

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Jan. 28	1955	120, 096	209
Jan. 31	"	59, 994	"
Feb. 1, 2	"	89, 910	"
Feb. 5	"	89, 910	"
Feb. 10	"	59, 940	"
Feb. 14	"	59, 940	"

"B"

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
June 10	1955	90,720	209
June 13	"	90,720	"
June 14	"	90,720	"
June 15	"	82,800	"

The Riss rate applicable during the period of the "A" and "B" shipments was established via all motor carriers including Riss & Co. party to Southwestern Motor Freight Bureau Tariff-Hughett Agent Section 22 Quotation 1000-M and 1000-N.

The Riss rate applicable during the period of the "B" shipments was also established in Riss Section 22 Quotation No. AEF-3-ECD via:

- (1) Direct Riss service.

The identical rate applicable during the period of the "A" and "B" shipments was also established in Watson Bros. Section 22 Quotation No. 1000 over the following competing routes:

- (2) Gottula Trucking & Transfer Co. to Pueblo, Colorado; Watson Bros. to Kansas City, Mo.; Lee Way Motor Freight Lines to Tulsa, Okla.; American Transfer & Storage Co., Inc. This route was not in effect after March 4, 1955.
- (3) Gottula Trucking & Transportation Co., Inc. to Pueblo, Colo.; Watson Bros. to Kansas City, Mo.; Luper Transportation Co.
- (4) Gottula Trucking & Transportation Co., Inc. to Pueblo, Colo.; Watson Bros. to Kansas City, Mo.; Mid-Continent Freight Lines.
- (5) Gottula Trucking & Transportation Co., Inc. to Pueblo, Colo.; Watson Bros. to Kansas City, Mo.; Gillette Motor Transport, Inc.

The following counterclaimants participated in routes which would have enabled them to perform this service, and offered to perform such service during the "A" period at a through rate of \$2.852 per 100 pounds (AAR No. 14-A) and during the "B" period at a through rate of \$2.64 (SWFB No. 1641):

Atchison, Topeka & Santa Fe
Missouri Pacific
Chicago, Rock Island & Pacific
Missouri-Kansas-Texas

Under the existing policies of the military establishment and the then applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Atchison, Topeka & Santa Fe	\$8,357.30
Missouri Pacific	6,628.19
Chicago, Rock Island & Pacific	3,861.64
Missouri-Kansas-Texas	4,207.42

Joliet Arsenal, Joliet, Illinois
to
Ravenna Arsenal, Atlas, Ohio

Shipments per Revised Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
May 5, 6, 7	1954	357,500	122
May 11, 12, 13	1954	357,500	122
May 17, 18, 19	1954	357,500	122
May 21	1954	165,000	122
May 25	1954	275,500	122
May 27	1954	137,500	122
June 3, 4	1954	110,000	122
June 9, 10	1954	385,000	122
June 14	1954	165,000	122
June 16, 17, 18	1954	247,500	122

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
June 21, 22, 23	1954	165, 000	122
Aug. 19	1954	165, 000	122
Sept. 2	1954	82, 500	122
Sept. 7, 8, 9	1954	467, 500	122
Oct. 29	1954	165, 000	122
May 2, 3, 4, 5, 6	1955	468, 500	122
May 9, 10, 11, 12, 13	1955	440, 500	122
May 16, 17, 18, 19, 20	1955	412, 500	122
May 23, 24, 25, 26, 27	1955	412, 500	122
June 1, 2, 3	1955	273, 580	122
June 6, 7, 8, 9, 10	1955	496, 490	122
June 13, 14, 15, 16, 17	1955	468, 500	122
June 20, 21, 22, 23, 24	1955	414, 960	122
June 27, 28	1955	247, 500	122
June 30	1955	51, 105	122

The Riss rate was established in Riss Section 22 Quotation Nos. 498-54, AEF-1, and AEF-3-ECD via the following route:

(1) Riss & Co. to Akron, Ohio; M. & M. Trucking Co.

The identical rate was established in Hayes Freight Lines Section 22 Quotation No. 844 via the following competing route:

(2) Hayes Frt. Lines, to Cleveland, Ohio; Wells
Truck Lines.

The following counterclaimants participated in routes which would have enabled them to perform the service, and offered to perform such service at a through rate of \$1. 5065 per 100 pounds (AAR No. 14-A):

Atchison, Topeka & Santa Fe

Chicago, Milwaukee, St. Paul and Pacific

Wabash

Pennsylvania Railroad

Under the existing policies of the military establishment and the then applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Atchison, Topeka & Santa Fe	\$6,862.71
Chicago, Milwaukee, St. Paul and Pacific	6,862.70
Wabash	6,862.70
Pennsylvania Railroad	27,450.82

Joliet Arsenal, Joliet or Elmwood, Illinois
to
Pueblo Ordnance Depot, Avondale, Colorado
Shipments per Revised Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
March 23	1954	99,998	283
July 1, 2	1954	218,328	283
July 20, 21, 22	1954	245,312	283

The Riss rate was established in Riss Section 22 Quotation 544-54 via:

(1) Direct Riss route.

The identical rate for other motor carriers was established in Watson Bros. Section 22 Quotation Nos. 891-A and 1000 via the following competing route:

(2) Roy Cartage Co. to Chicago, Illinois; Watson Bros.
to Pueblo, Colorado; Gottula Trucking & Transportation, Co.

The following counterclaimants participated in routes which would have enabled them to perform this service, and offered to perform such service at a through rate of \$3.45 per 100 pounds (AAR No. 14-A):

Atchison, Topeka & Santa Fe
Chicago, Milwaukee, St. Paul & Pacific
Missouri Pacific
Wabash

Under the existing policies of the military establishment and the then applicable

division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Atchison, Topeka & Santa Fe	\$7,875.44
Chicago, Milwaukee, St. Paul & Pacific	1,847.32
Missouri Pacific	6,028.11
Wabash	1,847.32

Joliet Arsenal, Joliet, Illinois
to
Camp Irwin, Barstow, California.
Shipments per Revised Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
April 2, 3	1956	118,756	557
June 7, 8, 11, 12, 13	1956	269,940	557

The Riss rate was established in Riss Section 22 Quotation No. 1025-56 via the following route:

- (1) Riss & Co. to Denver, Colo.; Pacific Intermountain Express to Los Angeles, Calif.; Constructors Transport Co.

The identical rate was established in Rocky Mountain Motor Tariff Bureau Section 22 Quotation Nos. 43-D and 52 via the following competing route:

- (2) Evans Cartage Co. to Chicago, Ill.; Watson Bros. Transportation Co. to Denver, Colo.; Gallagher Freight Lines to Salt Lake City, Utah; Garrett Freight Lines to Barstow, Calif.; Victorville-Barstow Truck Line.

The following counterclaimants participated in routes which would have enabled them to perform the service, and offered to perform such service at a through rate of \$6.28 per 100 pounds (WTA No. 76):

Atchison, Topeka & Santa Fe
Chicago, Milwaukee, St. Paul and Pacific

Wabash

Union Pacific

Under the existing policies of the military establishment and the then applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Atchison, Topeka & Santa Fe	\$11,198.01
Chicago, Milwaukee, St. Paul and Pacific	1,006.79
Wabash	1,006.79
Union Pacific	10,191.72

Joliet Arsenal, Illinois
to
Cornhusker Ordnance Depot, Coplant, Nebraska

Shipments per Revised Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Feb. 18	1954	137,500	211
March 5	1954	137,500	211

The Riss rate is shown on Revised Schedule B as being the effective and applicable rate for the above shipments.

The identical rate is established in Middlewest Motor Freight Bureau Section 22 Quotation No. 303-D via the following competing route:

(1) Roy Cartage Co. to Chicago, Illinois; Watson Bros.

The following counterclaimants participated in routes which would have enabled them to perform the service, and offered to perform such service at a through rate of \$2.2885 per 100 pounds (AAR 14-A):

Atchison, Topeka & Santa Fe

Chicago, Milwaukee, St. Paul & Pacific

Wabash

Chicago, Burlington & Quincy

Union Pacific

Under the existing policies of the military establishment and the then applicable division agreements between rail carriers, each would have received

the following revenues from the traffic transported by Riss:

Atchison, Topeka & Santa Fe	\$ 896.81
Chicago, Milwaukee, St. Paul & Pacific	1,164.27
Wabash	896.81
Chicago, Burlington & Quincy	1,219.34
Union Pacific	1,219.34

Joliet Arsenal, Joliet, Illinois
to
Lone Star Ordnance and Red River
Arsenal, Defense, Texas

Shipments per Revised Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Feb. 18, 19	1954	403,800	247
Feb. 21, 22	"	247,112	"
Feb. 26	"	113,392	"
March 1	"	84,710	"
March 12	"	83,952	"
March 15, 16, 17	"	83,952	"
May 3	"	166,080	"
July 21	"	55,618	"
Sept. 27	"	117,250	"
Sept. 29	"	56,750	"
Oct. 1	"	82,375	"
Dec. 20	"	58,388	"
Jan. 6	1955	88,038	"
Jan. 10, 11	"	88,038	"
June 2, 3	"	52,960	"
June 6, 7	"	53,225	"

The Riss rate was established in Riss Section 22 Quotations Nos. 404-53, AEF-1, and AEF-3-ECD over the following routes for the periods shown:

February, 1954 - February, 1955 -

- (1) Riss to St. Louis; Arkansas Motor Freight to
Texarkana; North East Texas Motor Lines to
Defense.

June, 1955 -

- (2) Riss to St. Louis; Arkansas Motor Freight to
Texarkana; Red Ball to Defense.

The identical rate for other motor carriers was established in Middlewest Motor Freight Bureau Section 22 Quotation Nos. 303-D (to December 10, 1954) and 303-E (after December 10, 1954). The route shown in 303-D was as follows:

- (3) Hayes to St. Louis; Strickland to Defense.

The rates in 303-E were established for the account of all sixty participants in Section 2 of that quotation, including Hayes and Strickland.

The following counterclaimants participated in routes which would have enabled them to perform this service, and offered to perform such service at a through rate of \$2.9785 per 100 pounds (AAR Quotation 14-A) to June 24, 1954, and \$2.47 per 100 pounds thereafter (SWFB Quotation 1440):

Atchison, Topeka & Santa Fe
Chicago, Milwaukee, St. Paul & Pacific
Wabash

Under the existing policies of the military establishment and the then applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Atchison, Topeka & Santa Fe	\$9,045.06
Chicago, Milwaukee, St. Paul & Pacific	5,392.37
Wabash	5,392.37

Joliet Arsenal, Joliet, Illinois
to
Nebraska Ordnance Depot, Firestone, Nebraska
Shipments per Revised Schedule B

"A"

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Feb. 19	1954	550, 000	179
Feb. 22, 23, 24, 25, 26	1954	1, 540, 000	179
March 1, 2, 3, 4	1954	1, 292, 500	179

"B"

July 27	1954	275, 000	150
July 30	1954	110, 000	150
Aug. 5, 6	1954	440, 000	150
Aug. 9, 10, 11	1954	385, 000	150
Aug. 16	1954	82, 500	150
Aug. 19	1954	220, 000	150
Aug. 23, 24	1954	330, 000	150
Aug. 27	1954	275, 000	150
Sept. 13, 14	1954	220, 000	150
Sept. 16, 17	1954	412, 500	150
Sept. 21, 22, 23	1954	660, 000	150
Sept. 28, 29	1954	137, 500	150
Oct. 5, 6, 7, 8	1954	412, 500	150
Oct. 11, 12, 13	1954	165, 000	150
Nov. 2	1954	55, 000	150
Nov. 12	1954	55, 000	150
Nov. 15, 16, 17, 18, 19	1954	275, 000	150
Nov. 23	1954	82, 500	150
Nov. 29, 30	1954	110, 000	150
Dec. 1, 2, 3	1954	220, 000	150
Dec. 7, 8, 9, 10	1954	303, 400	150

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Dec. 14, 15	1954	110, 000	150
Dec. 17	1954	55, 000	150
Dec. 31	1954	110, 000	150
Jan. 4, 5, 6, 7	1955	275, 000	150
Jan. 10, 11	1955	110, 000	150
Jan. 13, 14	1955	165, 000	150
Feb. 3	1955	165, 000	150
Feb. 8, 9, 10	1955	275, 000	150
Feb. 14	1955	55, 000	150
Feb. 16	1955	55, 000	150
Mar. 1	1955	55, 000	150
Mar. 3, 4	1955	110, 000	150
Mar. 7, 8, 9, 10	1955	275, 000	150
Mar. 14, 15, 16	1955	165, 000	150
Apr. 1	1955	110, 000	150
Apr. 4, 5	1955	302, 500	150
Apr. 8	1955	220, 000	150
Apr. 13, 14	1955	330, 000	150
Apr. 18, 19	1955	247, 500	150
Apr. 21, 22	1955	247, 500	150
May 3, 4, 5	1955	330, 000	150
May 9, 10	1955	165, 000	150
May 12, 13	1955	247, 500	150
May 17, 18	1955	330, 000	150
May 20	1955	82, 500	150
May 23, 24	1955	247, 500	150
May 26	1955	82, 500	150
June 2, 3	1955	165, 000	150
June 6, 7	1955	165, 000	150

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
June 9, 10	1955	247, 500	150
June 13	1955	82, 500	150
June 15, 16	1955	330, 000	150
June 20	1955	82, 500	150
June 22	1955	165, 000	150
June 24	1955	165, 000	150
June 27	1955	82, 500	150
June 29, 30	1955	165, 000	150
July 5	1955	82, 500	150
July 7	1955	220, 000	150
July 11, 12	1955	302, 500	150
Aug. 2, 3	1955	247, 500	150
Aug. 5	1955	275, 000	150
Aug. 8	1955	137, 500	150
Aug. 10, 11, 12	1955	550, 000	150
Aug. 15	1955	165, 000	150
Aug. 17, 18	1955	385, 000	150
Aug. 20	1955	165, 000	150
Aug. 22, 23	1955	275, 000	150
Aug. 25	1955	412, 500	150
Aug. 29	1955	137, 500	150
Sept. 1	1955	110, 000	150
Sept. 6	1955	110, 000	150
Sept. 8, 9	1955	412, 500	150
Sept. 12, 13	1955	275, 000	150
Sept. 15, 16	1955	412, 500	150
Sept. 19, 20, 21, 22, 23	1955	577, 500	150
Sept. 27	1955	220, 000	150
Sept. 29, 30	1955	522, 500	150

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Oct. 1	1955	82, 500	150
Oct. 4, 5, 6	1955	247, 500	150
Oct. 10, 11, 12	1955	357, 500	150
Oct. 14	1955	82, 500	150
Oct. 18, 19	1955	220, 000	150
Oct. 24, 25, 26	1955	412, 500	150
Oct. 28	1955	247, 500	150
Nov. 2, 3	1955	165, 000	150
Nov. 7, 8	1955	275, 000	150
Nov. 10	1955	165, 000	150
Nov. 14	1955	55, 000	150
Nov. 16, 17	1955	275, 000	150
Nov. 21	1955	165, 000	150
Nov. 23	1955	165, 000	150
Nov. 25	1955	82, 500	150
Nov. 28, 29, 30	1955	330, 000	150
Dec. 2	1955	165, 000	150
Dec. 5	1955	82, 500	150
Dec. 7, 8, 9	1955	247, 500	150
Dec. 12, 13, 14, 15, 16	1955	412, 500	150
Dec. 19, 20	1955	165, 000	150
Dec. 22	1955	247, 500	150
Jan. 3, 4, 5, 6	1956	330, 000	150
Jan. 9, 10, 11, 12, 13	1956	522, 500	150
Jan. 16, 17, 18, 19	1956	357, 500	150
Feb. 1, 2, 3	1956	357, 500	150
Feb. 6, 7, 8, 9, 10	1956	412, 500	150
Feb. 13, 14, 15, 16, 17	1956	385, 000	150
Feb. 20, 21, 22	1956	220, 000	150

"C"

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Apr. 3, 4, 5, 6	1956	412, 500	108
Apr. 9, 10, 11, 12, 13	1956	550, 000	108
Apr. 17, 18, 19, 20	1956	605, 000	108
Apr. 23	1956	82, 500	108

The Riss rate applicable during the period of the "A" shipments was established in Riss Section 22 Quotation No. 320-53 via the following route:

- (1) Riss & Co. to Omaha, Neb.; Tri-State Warehousing & Distributing Co.

The identical rate applicable during the period of the "A" shipments was established in Watson Bros. Section 22 Quotation No. 1000 and the Middlewest Motor Freight Bureau Section 22 Quotation No. 303-D via the following competing route:

- (2) Roy Cartage Co.; Watson Bros.

The Riss rate applicable during the period of the "B" shipments was established in Riss Section 22 Quotation Nos. 320-53, 662-54, AEF-1, AEF-3-ECD, 851-55 and AEF-5-ECD via the following routes:

- (3) Riss & Co. to Omaha, Neb.
- (4) Riss & Co. to Omaha, Neb.; Neylon Bros. Frt. Lines.

This route was in effect from July 26, 1954, to August 24, 1954, and from March 15, 1955, through December 13, 1958.

The identical rate applicable during the period of the "B" shipments was established in Watson Bros. Section 22 Quotation Nos. 914-A and 1000 via the following competing routes:

- (5) Roy Cartage Co.; Watson Bros.
- (6) Hayes Frt. Lines to Chicago or Peoria, Ill., or St. Louis, Mo.; Watson Bros. This route was effective from October 31, 1955.

The Riss rate applicable during the period of the "C" shipments was established

in Riss Section 22 Quotation Nos. AEF-3-ECD, 851-55 and AEF-5-ECD via the following routes:

(7) Riss & Co. to Omaha, Neb.; Tri-State Warehousing & Distributing Co.

(8) Riss & Co. to Omaha, Neb.; Neylon Bros. Frt. Lines.

This route was in effect from July 26, 1954, to August 24, 1954, and from March 15, 1955, through December 13, 1958.

The identical rate applicable during the period of the "C" shipments was established in Watson Bros. Section 22 Quotation No. 1125 via the following competing route:

(9) Evans Cartage Co.; Watson Bros.

The following counterclaimants participated in routes which would have enabled them to perform the service, and offered to perform such service at a through rate during the "A" period of \$1.79 per 100 pounds (WTL No. 697), during the "B" period a rate of \$1.50 per 100 pounds (WTL No. 775) and during the "C" period a rate of \$1.24 per 100 pounds for the first 40,000 pounds and \$0.99 for the excess over 40,000 pounds (WTL No. 1253):

Atchison, Topeka & Santa Fe

Chicago, Milwaukee, St. Paul and Pacific

Wabash

Chicago, Burlington & Quincy

Union Pacific

Under the existing policies of the military establishment and the then applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Atchison, Topeka & Santa Fe	\$71,547.56
Chicago, Milwaukee, St. Paul and Pacific	85,175.69
Wabash	71,547.56
Chicago, Burlington & Quincy	77,225.94
Union Pacific	77,225.94

Joliet Arsenal, Joliet, Illinois
to
Sierra Ordnance Depot, Herlong, California
Shipments per Revised Schedule B

"A"

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
May 20,	1955	59,630	596
May 23, 24	"	89,445	"

"B"

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Aug. 22,	1955	60,568	596
Aug. 23,	"	121,136	"
Aug. 25,	"	90,852	"
Aug. 26	"	90,852	"
Aug. 29	"	60,568	"
Aug. 30, 31	"	121,136	"

The Riss rate for both "A" and "B" shipments was established in Riss Section 22 Quotation No. AEF-2-TC over the following routes:

- (1) Riss to Denver, Colorado; Ashworth Transfer to Reno; Wells Cargo to Herlong.
- (2) Riss to Denver; Pacific Intermountain Express to Reno; Wells Cargo to Herlong.
- (3) Riss to Denver; Bee Freight Line to Apache, Utah; Eastern Utah-United Freight Line to Salt Lake City; Inland Freight Lines to Reno; Wells Cargo to Herlong.
- (4) Riss to Denver; Rio Grande Motor Way to Grand Junction, Colo.; Garrett Freightlines to Reno; Wells Cargo to Herlong.

The identical rate was established in Rocky Mountain Motor Tariff Bureau Section 22 Quotation 43-D over the following routes for the period relating

to the "A" shipments:

- (5) Hayes Freight Line to Chicago; Watson Bros. to Denver; Ashworth to Reno; Wells Cargo to Herlong.
- (6) Hayes to Chicago; Watson Bros. to Denver; Gallagher Transfer to Salt Lake City; Ringsby to Reno; Wells Cargo to Herlong.
- (7) Hayes to Chicago; Watson Bros. to Denver; Gallagher to Salt Lake City; Ringsby to Reno; Nevada-California to Herlong.
- (8) Hayes to St. Louis; Strickland to Dallas; Gillette to El Paso; Western to Reno; Wells Cargo to Herlong.
- (9) Hayes to St. Louis; Strickland to Dallas; Gillette to El Paso; Western to Reno; Nevada-California to Herlong.
- (10) Hayes to St. Louis; Strickland to Dallas; Sunset Motor Lines to El Paso; Western to Reno; Nevada-California to Herlong.
- (11) Hayes to Chicago; Watson Bros. to Denver; Ashworth to Reno; Nevada-California to Herlong.
- (12) Hayes to St. Louis; Strickland to Dallas; Sunset to El Paso; Western to Reno; Wells Cargo to Herlong.
- (13) Hayes to Chicago; Watson Bros. to Denver; Goldstein Refrigerator and Ringsby to Reno; Nevada-California to Herlong.
- (14) Hayes to Chicago; Watson Bros. to Denver; Goldstein Refrigerator and Ringsby to Reno; Wells Cargo to Herlong.

- (15) Joliet Warehouse & Transfer to Joliet;
Mid-Continent to Oklahoma City; Lee-Way to
Amarillo; Navajo to Manteca, Cal.; Wells Cargo
to Herlong.
- (16) Roy Cartage to Chicago; Watson Bros. to
Denver; Gallagher to Salt Lake; Ringsby to
Reno; Wells Cargo to Herlong.
- (17) Roy Cartage to Chicago; Watson Bros. to
Denver; Gallagher to Salt Lake City; Ringsby
to Reno; Nevada-California to Herlong.
- (18) Roy Cartage to Chicago; Watson Bros. to
Denver; Ashworth to Reno; Wells Cargo to
Herlong.
- (19) Roy Cartage to Chicago; Watson Bros. to
Denver; Ashworth to Reno; Nevada-California
to Herlong.
- (20) Roy Cartage to Chicago; Watson Bros. to
Denver; Goldstein Refrigerator and Ringsby
to Reno; Nevada-California to Herlong.
- (21) Roy Cartage to Chicago; Watson Bros. to
Denver; Goldstein Refrigerator and Ringsby
to Reno; Wells Cargo to Herlong.

During the period relating to the "B" shipments, 43-D contained the following additional route:

- (22) Joliet Warehouse to Joliet; Mid-Continent
to Oklahoma City; T. I. M. E. to Azusa, Cal.;
Constructors Transport to Herlong.

The following counterclaimants participated in routes which would have enabled them to perform the service, and offered to perform such service at a through rate of \$6.463 per cwt. (AAR Quotation No. 14-A):

Atchison, Topeka & Santa Fe
Chicago, Milwaukee, St. Paul & Pacific
Wabash
Southern Pacific

Under the existing policies of the military establishment and the then applicable division agreements between rail carriers each would have received the following revenues from the traffic transported by Riss:

AT&SF	\$1,850.69
CM StP & P	1,850.69
Wabash	1,850.69
S. P.	10,027.41

Joliet Arsenal, Joliet, Illinois
to
Kansas Ordnance Depot, Parsons, Kansas
Shipments per Revised Schedule B

		<u>"A"</u>	
<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
March 2, 3, 4, 5	1954	275,000	191
April 6, 7, 8	1954	193,100	"

		<u>"B"</u>	
<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Jan. 11, 12, 13	1955	330,000	189
Feb. 1, 2, 3	1955	165,000	"
March 1, 2, 5	1955	165,000	"
April 1	1955	55,000	"
April 4, 5, 6	1955	165,000	"

The Riss rate applicable to the "A" shipments was established pursuant to Riss Section 22 Quotations Nos. 377-53 and 544-54 for direct service. The Riss rate applicable for the "B" shipments was established in Riss Section 22 Quotation No. AEF-1 and AEF-3-ECD.

The identical rate for other motor carriers for the period relating

to the "A" shipments was established in Middlewest Motor Freight Bureau Section 22 Quotation No. 303-D over the following competing routes:

- (2) Roy Cartage to Chicago; Watson Bros. to
Kansas City; Missouri-Arkansas to Parsons
- (3) M. C. Slater, Inc. to St. Louis; Powell Bros.
Truck Lines, Inc. to Joplin, Mo.; Missouri-
Arkansas to Parsons

The identical rate for the period of the "A" shipments was also established in Southern Express Co. Section 22 Quotation No. 21-53 over the following competing route:

- (4) Hayes Freight Lines, Southern Express, Missouri-
Arkansas Transportation.

The identical rate for the period of the "B" shipments was established in Middlewest Motor Freight Bureau Section 22 Quotation No. 303-E over the competing routes of motor carriers party to 303-E.

The identical rate for the period of the "B" shipments was also established pursuant to Southern Express Co. Section 22 Quotation No. 21-53 over the following competing route:

- (5) Hayes Freight Lines, Southern Express,
Missouri-Arkansas Transportation Co.

The following counterclaimants participated in routes which would have enabled them to perform the service and offered to perform such service at a through rate of \$1.91 per 100 pounds during the "A" period and at a rate of \$1.89 per 100 pounds during the "B" period (WTL Quotation No. 942):

Atchison, Topeka & Santa Fe
Chicago, Milwaukee, St. Paul & Pacific
Wabash
Missouri-Kansas-Texas
St. Louis-San Francisco

Under the existing policies of the military establishment and the

then applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Atchison, Topeka & Santa Fe	\$3,708.05
Chicago, Milwaukee, St. Paul & Pacific	3,708.05
Wabash	3,708.05
Missouri-Kansas-Texas	5,370.26
St. Louis-San Francisco	5,370.26

Indiana Arsenal, Charlestown or Watson, Indiana
to

Pueblo Ordnance Depot, Avondale, Colorado

Shipments per Revised Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Oct. 12, 13, 14	1954	164,424	296
Oct. 26, 27, 28	"	103,220	"
Nov. 18, 19	"	110,880	"
Nov. 22, 23, 24	"	277,200	"
Nov. 29, 30	"	166,320	"
Dec. 1, 2	"	221,760	"
Aug. 25	1955	210,210	"
Aug. 30, 31	"	180,180	"
Sept. 1, 2	"	210,210	"
Sept. 7, 8, 9	"	360,360	"
Sept. 12, 13, 14, 15, 16	"	450,450	"
Sept. 19	"	150,150	"
Sept. 21	"	120,120	"
Sept. 23	"	180,180	"
Sept. 27	"	180,180	"
Sept. 29	"	180,180	"
Oct. 3, 4, 5, 6, 7	"	270,240	"
Nov. 15, 16	"	120,560	"
Nov. 21, 22, 23	"	180,840	"

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Nov. 28, 29, 30	1955	180,840	296
Dec. 1	"	90,420	"
Dec. 5, 6, 7	"	180,950	"

The Riss rate was established in Riss Section 22 Quotation No. AEF-1, AEF-3-ECD and AEF-5-ECD via the following routes:

- (1) Adkins Transfer and Storage Co. to Jeffersonville, Indiana; Riss & Co.
- (2) Direct Riss service. This route was not effective until November 19, 1955.

The identical rate for other motor carriers was established in Watson Bros. Section 22 Quotation No. 1000 via the following route:

- (3) Falls Cities Transfer Co., Inc., to Louisville, Kentucky; Hayes Freight Lines to St. Louis, Missouri, or Peoria, Illinois; Watson Bros. to Pueblo, Colorado; Gottula Trucking and Transportation Co.

The following counterclaimants participated in routes which would have enabled them to perform this service, and offered to perform such service at a through rate of \$2.96 per 100 pounds (WTL-854):

Pennsylvania Railroad
Atchison, Topeka & Santa Fe
Missouri Pacific

Under the existing policies of the military establishment and the applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Pennsylvania Railroad	\$17,459.79
Atchison, Topeka & Santa Fe	48,887.41
Missouri Pacific	43,173.28

Indiana Arsenal, Charlestown, Indiana
to
Navajo Ordnance Depot, Bellemont, Arizona

Shipments per Revised Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Sept. 23	1954	110, 880	557
Sept. 8, 9, 10	"	388, 080	"
Sept. 13, 14, 15, 16, 17	"	358, 460	"
Sept. 20	"	109, 616	"
Oct. 21, 22	"	115, 830	"
Oct. 25, 26, 27, 28, 29	"	443, 520	"
Nov. 1, 2, 3	"	192, 210	"
June 21, 22	1955	180, 180	"
June 29, 30	"	180, 180	"
July 7, 8	"	150, 150	"
July 15	"	120, 120	"
Oct. 6, 7	"	120, 848	"
Oct. 10, 11, 12, 13	"	241, 696	"

The Riss rate during the period September through November, 1954, via the following route:

(1) Adkins Transfer to Jeffersonville, Indiana;

Riss to Denver; Denver-Chicago to Bellemont.

The identical rate for other motor carriers was established in Rocky Mountain Motor Tariff Bureau Section 22 Quotation No. 43-C via the following competing routes:

(2) Adkins Transfer to Louisville; Hayes to Chicago

Watson Bros. to Denver; Denver-Chicago to Bellemont.

(3) Falls Cities to Louisville; Hayes to Chicago;

Watson Bros. to Denver, Denver-Chicago to Bellemont.

- (4) Mid-Continent to Oklahoma City; Lee Way to Amarillo; Navajo to Bellemont.
- (5) Mid-Continent to Oklahoma City; Gillette to El Paso; Alabam to Bellemont

The Riss rate during the period June through October, 1955, was established in Riss Section 22 Quotations No. AEF-2-TC and Uintah Section 22 Quotation No. 41 via the following competing routes:

- (1) Adkins Transfer to Jeffersonville, Indiana; Riss to Denver; Ashworth to Salt Lake City; Salt Lake Transfer to Bellemont.
- (2) Adkins to Jeffersonville, Indiana; Riss to Denver; Navajo to Bellemont.
- (3) Adkins to Jeffersonville, Indiana; Riss to Denver; Bee to Apache, Utah; Eastern Utah and Uintah to Salt Lake City; Salt Lake Transfer to Bellemont.
(eff. 7-15-55).

The identical rate for other motor carriers was established in Rocky Mountain Motor Tariff Bureau Section 22 Quotation No. 43-D via routes (4) and (5) above.

The following counterclaimants participated in routes which would have enabled them to perform this service, and offered to perform such service at a through rate of \$6.2675 per cwt. (AAR Quot. No. 14-A):

Pennsylvania Railroad

Atchison, Topeka & Santa Fe

Under the existing policies of the military establishment and the applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Pennsylvania Railroad	\$11,047.41
Atchison, Topeka & Santa Fe	147,865.36

Indiana Arsenal (Charlestown or Watson, Indiana)
to
Lone Star Ordnance or Red River Arsenal, Defense, Texas

Shipments per Revised Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
June 7, 8, 9	1955	150,700	235
June 13	1955	90,420	235
Sept. 12, 13	1955	90,636	235
Oct. 25	1955	120,120	235
Oct. 26	1955	60,060	235
Oct. 28	1955	90,090	235
Oct. 31	1955	180,180	235
Nov. 7	1955	90,090	235
Nov. 17	1955	90,090	235
Nov. 18	1955	90,090	235
Dec. 2	1955	60,500	235
Dec. 12	1955	121,000	235
Dec. 19	1955	60,500	235
Dec. 20, 21	1955	60,500	235

The Riss rate was established in Riss Section 22 Quotation No. AEF-3-ECD over the following route:

- (1) Adkins Transfer Co. to Jeffersonville, Indiana; Riss & Co. to St. Louis, Missouri; Arkansas Motor Freight Lines to Texarkana, Texas; Ted Ball Motor Freight.

The identical rate was established for all motor carrier participants in Section 2 of Middlewest Motor Freight Bureau Section 22 Quotation No. 303-E.

The following counterclaimants participated in routes which would have enabled them to perform this service, and offered to perform such service at a through rate of \$2.35 per 100 pounds (SWFB No. 1459):

Pennsylvania Railroad

Under the existing policies of the military establishment and the then applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Pennsylvania Railroad

\$6,368.39

Indiana Arsenal, Charlestown, Indiana
to
Naval Ammunition Depot, Hastings, Nebraska
Shipments per Revised Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
May 25, 26, 27, 28,	1954	352,980	252
June 2, 3,	1954	87,360	"
July 21, 22, 23,	1954	110,000	"
July 26, 27, 28, 29,	1954	192,500	"
Aug. 4, 5,	1954	55,000	"
Aug. 10,	1954	82,500	"
Aug. 12,	1954	55,000	"
Aug. 16, 17, 18,	1954	110,000	"
Aug. 26, 27,	1954	110,000	"
Aug. 30, 31,	1954	82,500	"
Sept. 1,	1954	55,000	"
Sept. 9, 10,	1954	82,500	"
Sept. 15, 16,	1954	82,500	"
Sept. 21, 22, 23, 24,	1954	220,000	"
Sept. 29,	1954	55,000	"
Oct. 1,	1954	55,000	"
Oct. 5, 6,	1954	110,000	"
Oct. 11, 12, 13, 14,	1954	165,000	"
Oct. 19, 20,	1954	82,500	"

The Riss rate was established in Riss Section 22 Quotations

Nos. 508-54 and AEF-1 over the following route:

(1) Adkins Transfer to Jeffersonville, Ind.;

Riss to Omaha; Union Freightways to Hastings.

The identical rate was established in Watson Bros. Section 22 Quotation No. 1000 over the following competing route:

(2) Falls Cities Transfer Co. to Louisville, Ky.;

Hayes to Peoria, Ill.; Watson Bros. to Hastings.

The following counterclaimants participated in routes which would have enabled them to perform this service, and offered to perform such service at a through rate of \$2.52 per cwt. (WTL Quotations Nos. 793, 854):

The Pennsylvania Railroad

Chicago, Burlington & Quincy

Missouri Pacific

Union Pacific

Under the existing policies of the military establishment and the then applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

P. R. R.	\$10,812.52
C. B. & Q.	10,812.51
Mo. Pac.	10,812.52
U. P.	5,622.50

Indiana Arsenal, Charlestown, Indiana
to
Sierra Ordnance Depot, Herlong, California
Shipments per Revised Schedule B

<u>Date</u>		<u>"A"</u> <u>Quantity</u>	<u>Rate</u>
Oct. 14, 19	1955	211,750	641
		<u>"B"</u>	
December 13,	1955	120,120	573
Dec. 15, 16	"	180,180	"
Dec. 21, 22, 23	"	180,180	"

The Riss rate for the "A" period was established in Riss Section 22 Quotation No. AEF-2-TC via the following competing routes:

- (1) Adkins Transfer to Jeffersonville, Indiana;
Riss to Denver; Ashworth to Reno; Wells Cargo to Herlong.
- (2) Adkins Transfer to Jeffersonville, Indiana;
Riss to Denver; Bee, Eastern Utah, and Uintah to Salt Lake City; Inland to Reno; Wells Cargo to Herlong.
- (3) Adkins to Jeffersonville, Indiana; Riss to Denver;
P. I. E. to Reno; Wells Cargo to Herlong.
- (4) Adkins to Jeffersonville, Indiana; Riss to Denver;
Rio Grande to Grand Junction, Colorado; Garrett to Reno; Wells Cargo to Herlong.

The identical rate for other motor carriers was established in Rocky Mountain Motor Tariff Bureau Section 22 Quotation No. 43-D via the following competing routes:

- (5) Mid-Continent to Oklahoma City; Lee Way to Amarillo; Navajo to Manteca, California; Wells Cargo to Herlong.
- (6) Mid-Continent to Oklahoma City; T. I. M. E. to Azusa, California; Sacramento Freight to Herlong.
- (7) Mid-Continent to Oklahoma City; Gillette to El Paso; Western to Reno; Nevada-California to Herlong.
- (8) Mid-Continent to Oklahoma City; Tri-State to Gallup, N. M.; Ashworth to Reno; Nevada-California to Herlong.

The Riss rate for the "B" period was established in Riss Section 22 Quotation No. AEF-4-TC via routes (1), (2) and (3) above.

The identical rate for other motor carriers was established in R. M. M. T. B. Section 22 Quotation No. 43-D via route (5) above and the following additional competing routes:

- (5) Adkins Transfer to Louisville; Hayes to Chicago;
Watson Bros. to Denver; Ashworth to Reno; Wells
Cargo to Herlong.
- (6) Adkins Transfer to Louisville; Hayes to Chicago;
Watson Bros. to Denver; Gallagher to Salt Lake
City; Northern to Reno; Wells Cargo to Herlong.
- (7) Adkins Transfer to Louisville; Hayes to Chicago;
Watson to Denver; Goldstein Refrigerator and
Ringsby to Reno; Wells Cargo to Herlong
- (8) Falls Cities to Louisville; Hayes to Chicago;
Watson Bros. to Denver; Ashworth to Reno;
Wells Cargo to Herlong.
- (9) Falls Cities to Louisville; Hayes to Chicago;
Watson to Denver; Gallagher to Salt Lake; Northern
to Reno Wells Cargo to Herlong.
- (10) Falls Cities to Louisville; Hayes to Chicago;
Watson to Denver; Goldstein Refrigerator and
Ringsby to Denver; Wells Cargo to Herlong.

The following counterclaimants participated in routes which would have enabled them to perform this service, and offered to perform such service during the "A" period at a through rate of \$6.41 per cwt. (T. C. F. B. Quot. No. 244) and during the "B" period at a through rate of \$5.73 per cwt. (WTA Quot. No. 76):

Pennsylvania Railroad

Southern Pacific

Under the existing policies of the military establishment and the applicable division agreements between rail carriers, each would have received the

following revenues from the traffic transported by Riss:

Pennsylvania Railroad \$3,391.14

Southern Pacific 8,077.07

Indiana Arsenal, Charlestown and Watson, Indiana
to

San Jacinto Ordnance, Houston, Texas

Shipments per Revised Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Nov. 2, 3	1955	180,180	286
Nov. 7, 8, 9, 10	1955	360,360	286
Nov. 22, 23	1955	180,180	286
Dec. 1, 2	1955	240,240	286
Dec. 8	1955	60,060	286

The Riss rate was established pursuant to Riss Section 22 Quotation Nos. 851-55 and AEF-5-ECD via the following route:

- (1) Adkins Transfer Co. to Jeffersonville, Ind.;
Riss & Co. to Denison, Tex.; Central Freight
Lines.

The identical rate was established in Southern Plaza Express Section 22 Quotation No. 54-26 via the following competing route:

- (2) Adkins Transfer Co. to Louisville, Ky.; Hayes
Freight Lines to St. Louis, Mo.; Southern Plaza
Express.

The identical rate was also established via:

- (3) All motor carriers party to Midwest Motor Freight
Bureau Tariff Section 22 Quotation, No. 303-E.

Effective November 22, 1955, the identical rate was also established in Powell Bros. Truck Lines Section 22 Quotation No. 208-55 via the following competing route:

- (4) Falls Cities Transfer & Storage Co. to Louisville,
Ky.; Hayes Freight Lines to St. Louis, Mo.; Powell

Bros. Truck Lines to Tulsa, Okla.; Gillette Motor
Transport.

The following counterclaimants participated in routes which would have enabled them to perform the service, and offered to perform such service at a through rate of \$2.86 per 100 pounds (SWFB No. 1459):

Pennsylvania Railroad
Atchison, Topeka & Santa Fe
Chicago, Rock Island & Pacific
Missouri Pacific
Missouri-Kansas-Texas

Under the existing policies of the military establishment and the then applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Pennsylvania Railroad	\$1,299.46
Atchison, Topeka & Santa Fe	3,552.81
Chicago, Rock Island & Pacific	3,582.01
Missouri Pacific	3,212.13
Missouri-Kansas-Texas	3,212.13

Indiana Ordnance, Charlestown and Watson, Indiana
to
Lake City Ordnance, Lake City, Missouri

Shipments per Revised Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
May 19	1954	56,324	168
May 26	1954	84,692	168
June 2	• 1954	56,324	168
June 9	1954	56,324	168
June 16, 17	1954	56,324	168
June 23	1954	56,521	168
July 8	1954	56,324	168
July 14	1954	84,692	168

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
July 21	1954	56,324	168
July 28	1954	75,039	168
August 25	1954	65,628	168
August 31	1954	64,249	168
September 8	1954	65,825	168
September 15	1954	77,251	168
September 21	1954	76,069	168
February 23	1955	65,780	168
March 2	1955	65,780	168
March 9, 10	1955	65,601	168
March 17, 18	1955	66,030	168

The Riss rate was established pursuant to Riss Section 22 Quotation Nos. 407-53, 507-54, AEF-1 and AEF-3-ECD via the following route:

- (1) Adkins Transfer Co. to Jeffersonville, Ind.;
Riss & Co.

The identical rate was established in Mid Continent Freight Lines Section 22 Quotation No. 103-53 via the following competing route:

- (2) Mid Continent Frt. Lines to Duenweg, Mo.; Tri-
State Warehousing and Distributing Co.

The following counterclaimants participated in routes which would have enabled them to perform the service, and offered to perform such service at a through rate during the period of the May 19, 26, June 2 and 9, 1954, movements of \$1.932 per 100 pounds (AAR No. 14-A) and during the period of the movements of June 16, 1954, to March 18, 1955, a through rate of \$1.68 per 100 pounds (WTL No. 854):

Pennsylvania Railroad
Missouri Pacific

Under the existing policies of the military establishment and the then applicable division agreements between rail carriers, each would have received

the following revenues from the traffic transported by Riss:

Pennsylvania Railroad \$5,414.42

Missouri Pacific 10,828.87

Indiana Arsenal, Charlestown or Watson, Indiana
to

McAlester (N. A. D.), Oklahoma

Shipments per Revised Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
May 26, 27, 28	1954	237,600	235
June 1, 2, 3, 4,	1954	336,540	235
June 7, 8, 9	1954	189,720	235
July 7	1954	55,000	235
July 9	1954	55,000	235
July 12	1954	55,000	235
July 14, 15, 16	1954	165,000	235

The Riss rate was established pursuant to Riss Section 22 Quotation No. 507-54 via the following route:

- (1) Adkins Transfer Co. to Jeffersonville, Ind.;
Riss & Co.

The identical rate was established in Hayes Freight Lines Section 22 Quotation No. 384 via the following competing route:

- (2) Falls Cities Transfer & Storage Co. to Louisville,
Ky.; Hayes Freight Lines to St. Louis, Mo.; Powell
Bros. Truck Lines to Tulsa, Okla.; Luper Trans-
portation Co.

The following counterclaimants participated in routes which would have enabled them to perform the service, and offered to perform such service at a through rate of \$2.35 per 100 pounds (SWFB No. 1398):

Pennsylvania Railroad

Chicago, Rock Island & Pacific

Missouri-Kansas-Texas

Under the existing policies of the military establishment and the then applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Pennsylvania Railroad	\$5,398.20
Chicago, Rock Island & Pacific	7,454.65
Missouri-Kansas-Texas	7,454.66

Indiana Arsenal, Charlestown, Indiana
to
Umatilla Ordnance Depot, Ordnance, Ore.

Shipments per Revised Schedule B

"A"

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Jan. 11, 12,	1955	180,180	590
Jan. 17, 18,	"	180,180	"
Jan. 21	"	90,090	"
Jan. 24, 25,	"	120,120	"

"B"

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Sept. 7, 8	1955	120,456	590
Sept. 13, 14	"	90,174	"
Oct. 5, 6,	"	60,060	"
Oct. 12, 13,	"	180,180	"
Oct. 18, 19,	"	150,150	"

"C"

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
August 13, 14, 15, 16, 17,	1956	600,600	582
Aug. 20, 21, 22, 23, 24,	"	660,660	"
Aug. 27, 28, 29, 30, 31,	"	600,600	"
Sept. 4, 5, 6, 7,	"	420,420	"

		<u>"D"</u>	<u>Quantity</u>	<u>Rate</u>
<u>Date</u>				
Sept. 20, 21,	1956		120, 120	582
Sept. 24, 25,	"		180, 180	"
Oct. 15, 16,	"		120, 848	"
Oct. 26,	"		120, 848	"
Oct. 30, 31	"		116, 220	"

The Riss rate for the "A" shipments was established in Rocky Mountain Motor Tariff Bureau Section 22 Quotation No. 43-C over the following route:

- (1) Adkins Transfer to Jeffersonville, Indiana;
Riss to Denver; Ashworth to Salt Lake City;
Garrett to Pendleton; Sites to Umatilla

The identical rate for other motor carriers was established in the same Rocky Mountain quotation via the following competing routes:

- (2) Adkins Transfer to Louisville; Hayes to Chicago;
Consolidated Freightways to Umatilla.
- (3) Adkins to Louisville; Hayes to Chicago; Watson Bros. to Denver; Ashworth to Salt Lake City;
Garrett to Pendleton; Sites to Umatilla
- (4) Adkins Transfer to Louisville; Hayes to Chicago;
Watson Bros. to Denver; Gallagher to Salt Lake City; Garrett to Pendleton; Sites to Umatilla.
- (5) Adkins Transfer to Louisville; Hayes to Chicago;
Watson Bros. to Denver; Goldstein Refrigerator and Ringsby to Salt Lake City; Garrett to Pendleton; Sites to Umatilla.
- (6) Falls Cities to Louisville; Hayes to Chicago;
Consolidated Freightways to Umatilla.

- (7) Falls Cities to Louisville; Hayes to Chicago;
Watson Bros. to Denver; Ashworth to Salt Lake
City; Garrett to Pendleton; Sites to Umatilla.
- (8) Falls Cities to Louisville; Hayes to Chicago;
Watson Bros. to Denver; Gallagher to Salt
Lake City; Garrett to Pendleton; Sites to
Umatilla.
- (9) Falls Cities to Louisville; Hayes to Chicago;
Watson Bros. to Denver; Goldstein Refrigerator
and Ringsby to Salt Lake City; Garrett to
Pendleton; Sites to Umatilla.

The same rate, via the same nine routes, was also established in Rocky Mountain Motor Tariff Bureau Section 22 Quotation 43-D for Riss and the carriers named above during the "B" period. In addition, Riss established the identical rate in Riss Section 22 Quotation No. AEF-2-TC, via route (1) above and via the following additional competing routes:

- (10) Adkins Transfer to Jeffersonville; Riss to
Denver; Rio Grande to Grand Junction, Colorado;
Garrett to Pendleton; Sites to Umatilla.
- (11) O. K. Trucking to Jeffersonville; Riss to Denver;
Rio Grande to Grand Junction; Garrett to Pendleton;
Sites to Umatilla.
- (12) O. K. Trucking to Jeffersonville; Riss to Denver;
Ashworth to Salt-Lake City; Garrett to Pendleton;
Sites to Umatilla.

The Riss rate during the "C" period was established in Riss Section 22 Quotation No. AEF-2-TC via the four Riss routes in effect during the "B" period. The identical rate for other motor carriers was established in Rocky Mountain Motor Tariff Bureau Section 22 Quotation No. 52 via the following routes:

- (5) Adkins Transfer to Louisville; Hayes to Chicago; Watson Bros. to Denver; Ashworth to Salt Lake City; Garrett to Pendleton; Sites to Umatilla.
- (6) Adkins Transfer to Chicago; Consolidated Freightways to Umatilla.
- (7) Adkins Transfer to Louisville; Hayes to Chicago; Watson Bros. to Denver; Gallagher to Salt Lake City; Garrett to Pendleton; Sites to Umatilla.
- (8) Adkins Transfer to Louisville; Hayes to Chicago; Watson Bros. to Denver; Goldstein Transfer and Ringsby to Salt Lake City; Garrett to Pendleton; Sites to Umatilla
- (9) Falls Cities to Louisville; Hayes to Chicago; Watson Bros. to Denver; Ashworth to Salt Lake City; Garrett to Pendleton; Sites to Umatilla.
- (10) Falls Cities to Louisville; Hayes to Chicago; Watson to Denver; Gallagher to Salt Lake City; Garrett to Pendleton; Sites to Umatilla.
- (11) Falls Cities to Louisville; Hayes to Chicago; Watson Bros. to Denver; Goldstein Trans. and Ringsby to Salt Lake City; Garrett to Pendleton; Sites to Umatilla

The same rates and the eleven routes via Riss and the other motor carriers named above remained in effect in R. M. M. T. B. No. 52 and AEF-2-TC during the "D" period. In addition, Riss published the identical rate in R. M. M. T. B. Section 22 Quotation No. 52 via the following route:

- (12) Adkins Transfer to Jeffersonville; Riss to Denver; P. L. E. to Salt Lake City; Consolidated Freightways to Umatilla.

The following counterclaimants participated in routes which would

have enabled them to perform this service, and offered to perform it at a through rate of \$6.486 per cwt. (AAR Quot. No. 14-A) during the "A" and "B" periods and at a through rate of \$5.82 (WTA Quot. No. 76) during the "C" and "D" periods:

Pennsylvania Railroad

Union Pacific

Under the existing policies of the military establishment and the applicable division agreements between railroads, each would have received the following revenues from the traffic transported by Riss:

Pennsylvania Railroad	\$20,387.91
Union Pacific	181,390.63

Indiana Arsenal, Charlestown, Indiana
to
Kansas Ordnance Works, Parsons, Kansas

Shipments per Revised Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Feb. 8, 9	1955	118,680	185
April 14, 15	1955	59,540	185
June 9, 10	1955	60,198	185
June 13, 14	1955	60,198	185
June 23, 24	1955	60,198	185
Oct. 5, 6, 7	1955	120,447	185
Oct. 10, 11, 12, 13, 14	1955	210,440	185
Oct. 17, 18, 19, 20, 21	1955	210,560	185
Oct. 28	1955	60,160	185
Nov. 8	1955	60,042	185
Dec. 12, 13	1955	90,171	185
Jan. 24, 25, 26	1956	110,117	185
Feb. 1	1956	60,071	185
Feb. 7, 8, 9	1956	120,342	185

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Feb. 14	1956	60,228	185
Feb. 16	1956	60,228	185
Feb. 21	1956	60,076	185
Feb. 24	1956	60,000	185
Feb. 27	1956	60,000	185

The Riss rate was established pursuant to Riss Section 22 Quotation Nos. AEF-1, AEF-3-ECD, and AEF-5-ECD, effective via the following route:

- (1) Adkins Transfer Co., Inc., to Jeffersonville,
Indiana; Riss & Co.

The identical rate was established in Middlewest Motor Freight Bureau Section 22 Tariff No. 303-E for the account of all the sixty motor carriers, including Adkins, who participated in the explosives rates quoted in section 2 thereof. Specifically, the following routes had been established in the predecessor Middlewest Quotations, 303-D, and remained in effect under 303-E:

- (2) Adkins Transfer Co., Inc., to Louisville, Ky.;
Hayes Freight Lines to St. Louis, Mo.; Yellow
Transit Freight Lines to Joplin, Missouri;
Missouri-Arkansas Transportation Co.
- (3) Falls Cities Transfer & Storage to Louisville,
Kentucky; Hayes Freight Lines to St. Louis, Mo.;
Yellow Transit Freight Lines to Joplin, Mo.;
Missouri-Arkansas Transportation Co.

The identical rate was also established in Mid Continent Section 22 Quotation No. 89-A over the following competing routes:

- (4) Mid Continent Freight Lines - Tri-State Warehousing
and Distributing Co.

The following counterclaimants participated in routes which would have enabled them to perform the service, and offered to perform such service

at a through rate of \$1.85 per 100 pounds (WTL Nos. 854 and 1191):

Pennsylvania Railroad
St. Louis-San Francisco
Missouri-Kansas-Texas

Under the existing policies of the military establishment and the then applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Pennsylvania Railroad	\$7,240.71
St. Louis-San Francisco	8,499.97
Missouri-Kansas-Texas	8,499.98

Indiana Arsenal, Charlestown or Watson, Indiana
to
Black Hills Ordnance Depot, Provo, South Dakota

Shipments per Revised Schedule B

<u>Date</u>		<u>"A"</u> <u>Quantity</u>	<u>Rate</u>
May 26, 27	1955	89,310	363
July 7, 8	1955	90,090	363
Sept. 16	1955	60,060	363
Sept. 20, 21	1955	51,290	363
		<u>"B"</u>	
Dec. 9	1955	180,180	321
Dec. 14, 15	1955	150,150	321
Dec. 19, 20, 21, 22, 23	1955	270,270	321
Jan. 3	1956	151,060	321
Jan. 5	1956	120,848	321
Jan. 9, 10, 11	1956	361,846	321
Jan. 13	1956	180,908	321
Jan. 16, 17	1956	180,908	321

The Riss rate applicable to the "A" shipments was established in Riss Section 22 Quotation No. AEF-3-TC via the following route:

- (1) Adkins Transfer Co. to Jeffersonville, Indiana;
Riss & Co. to Omaha, Nebraska; Buckingham
Transportation.

The identical rate was established via all motor carriers party to Middlewest Motor Freight Bureau Section 22 Quotation No. 303-E and was established in Watson Bros. Section 22 Quotation No. 1000 via the following competitive route:

- (2) Falls Cities Transfer Co. to Louisville, Kentucky;
Hayes Freight Lines to St. Louis, Missouri;
Watson Bros. to Omaha, Nebraska; Buckingham
Transportation.

The Riss rate applicable to the "B" shipments was established in Riss Section 22 Quotation No. AEF-5-TC via route (1) above.

The identical rate was established in Watson Bros. Section 22 Quotation No. 1000 via route (2) above.

The following counterclaimants participated in routes which would have enabled them to perform the service, and offered to perform it during the period of the "A" shipments at a through rate of \$3.8065 per 100 pounds (AAR No. 14-A) and during the period of the "B" shipments at a through rate of \$3.21 per 100 pounds (WTA 76):

Pennsylvania Railroad

Chicago, Burlington & Quincy

Under the existing policies of the military establishment and the then applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Pennsylvania Railroad	\$7,476.54
Chicago, Burlington & Quincy	47,351.37

Indiana Arsenal, Charlestown or Watson, Indiana

to

Sioux Ordinance, Sidney, Nebraska

Shipments per Revised Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Sept. 29, 30, Oct. 1	1954	83,160	303
Oct. 4, 5, 6, 7, 8	"	361,620	"
Oct. 10	"	55,440	"
Nov. 15, 16, 17, 18, 19	"	166,320	"
Dec. 3	"	55,440	"
Dec. 6, 7, 8, 9	"	194,040	"
Jan. 16, 17	1955	60,016	"
Jan. 25	"	60,016	"
Feb. 1, 2, 3, 4	"	150,040	"
Feb. 7, 8, 9, 10, 11	"	210,056	"
Feb. 14, 15, 16, 17, 18	"	180,048	"
Feb. 21, 22, 23	"	120,032	"
Feb. 25	"	58,443	"
March 14, 15, 16	"	90,024	"

"B"

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Nov. 2	1955	60,424	292
Nov. 21, 22, 23	"	332,332	"
Jan. 23, 24	1956	120,120	"

The Riss rate applicable during the period of the "A" and "B" shipments was established in Riss Section 22 Quotation No. 508-54, AEF-1, and AEF-3-ECD via the following route:

(1) Adkins Transfer Co. to Jeffersonville, Ind.;

Riss & Co. to Omaha, Neb.; Union Freightways.

The identical rate applicable during the period of the "A" shipments was

established in Watson Bros. Section 22 Quotation No. 1000 via the following competing route:

- (2) Falls Cities Transfer & Storage Co. to
Louisville, Ky.; Hayes Freight Lines to
Peoria, Ill. or St. Louis, Mo.; Watson Bros.
to Omaha, Neb.; West Nebraska Express.

The identical rate applicable to the period of the "A" shipments was also established via all motor carriers party to Middlewest Motor Freight Bureau Section 22 Quotation No. 303-E effective December 10, 1954.

The identical rate applicable to the period during the "B" shipments was established in Watson Bros. Section 22 Quotation No. 1000 via the following competing routes:

- (3) Route (2) above.
- (4) Falls Cities Transfer & Storage to Louisville,
Ky.; Hayes Freight Lines to Peoria, Ill. or
St. Louis, Mo.; Watson Bros. to Omaha, Neb.;
Neylon Bros. Freight Lines.

The following counterclaimants participated in routes which would have enabled them to perform the service, and offered to perform it during the period of the "A" shipments at a through rate of \$3.03 per 100 pounds (WTL No. 854), during November, 1955 "B" shipments at a through rate of \$2.921 per 100 pounds (WTA No. 76) and during the January, 1956 "B" shipments at a rate of \$2.92 per 100 pounds (WTA No. 76):

Pennsylvania Railroad
Chicago, Burlington & Quincy
Union Pacific

Under the existing policies of the military establishment and the then applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Pennsylvania Railroad	\$9,568.01
Chicago, Burlington & Quincy	25,869.07
Union Pacific	17,576.79

Indiana Arsenal, Watson, Indiana
to
Tooelle Ordnance Depot, Warner, Utah

"A"

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Aug. 18	1954	83,160	473
Aug. 24, 25	"	166,320	"
Aug. 30, 31	"	166,320	"
Sept. 2, 3	"	133,094	"
Sept. 7, 8, 9	"	360,494	"
Sept. 16	"	54,208	"
Nov. 4, 5	"	138,600	"
Nov. 11, 12	"	166,320	"
Nov. 16, 17	"	138,600	"

"B"

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Aug. 19	1955	120,120	473
Aug. 22	"	60,060	"
Aug. 26	"	90,090	"
Aug. 29	"	90,090	"
Sept. 6	"	60,060	"
Sept. 16	"	60,060	"
Sept. 19, 20, 21	"	120,120	"

"C"

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Feb. 6	1956	60,060	450
Feb. 14, 15, 16	"	180,180	"

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Feb. 20, 21	1956	120, 120	450
Feb. 24	"	90, 090	"
Feb. 28, 29	"	150, 150	"

"D"

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
March 12, 13	1956	210, 210	450
March 15, 16	"	90, 090	"
March 20	"	60, 328	"
March 21, 22	"	90, 090	"
March 26, 27	"	120, 120	"

The Riss rate during the period of the "A" shipments was established in Riss Section 22 Quotation No. 586-54, and AEF-1 via:

- (1) Adkins Transfer Co. to Jeffersonville,
Indiana; Riss & Co. to Denver, Colorado;
Ashworth Transfer Co.

The identical rate for other motor carriers for the period of the "A" shipments was established in Rocky Mountain Motor Tariff Bureau Section 22 Quotation No. 43-D via the following competitive routes:

- (2) Adkins Transfer Co. to Louisville, Kentucky;
Hayes Freight Lines to Chicago, Illinois;
Watson Bros. to Denver, Colorado; Ashworth
Transfer Co.
- (3) Adkins Transfer Co. to Louisville, Kentucky;
Hayes Freight Lines to Chicago, Illinois;
Watson Bros. to Denver, Colorado; Gallagher
Freight Lines to Salt Lake City, Utah; Barton
Truck Line.
- (4) Adkins Transfer Co. to Louisville, Kentucky;
Hayes Freight Lines to Chicago, Illinois;

Watson Bros. to Denver, Colorado; Gallagher Freight Lines to Salt Lake City, Utah; Salt Lake Transfer.

- (5) Adkins Transfer to Louisville, Kentucky; Hayes Freight Lines to Chicago, Illinois; Watson Bros. to Denver, Colorado; Boulder Truck Service - Ringsby Truck Lines to Salt Lake City, Utah; Barton Truck Lines.
- (6) Adkins Transfer to Louisville, Kentucky; Hayes Freight Lines to Chicago, Illinois; Watson Bros. to Denver, Colorado; Boulder Truck Service - Ringsby Truck Lines to Salt Lake City, Utah; Salt Lakes Transfer.
- (7) Fall Cities Transfer & Storage Co. to Louisville, Kentucky; Hayes Freight Lines to Chicago, Illinois; Watson Bros. to Denver, Colorado; Gallagher Freight Lines to Salt Lake City, Utah; Salt Lake Transfer
- (8) Fall Cities Transfer & Storage Co. to Louisville, Kentucky; Hayes Freight Lines to Chicago, Illinois; Watson Bros. to Denver, Colorado; Ashworth Transfer Co.
- (9) Fall Cities Transfer & Storage Co. to Louisville, Kentucky; Hayes Freight Lines to Chicago, Illinois; Watson Bros. to Denver, Colorado; Gallagher Freight Lines to Salt Lake City, Utah; Barton Truck Line.
- (10) Fall Cities Transfer & Storage Co. to Louisville, Kentucky; Hayes Freight Lines to Chicago, Illinois; Watson Bros. to Denver,

- Colorado; Boulder Truck Service - Ringsby Truck Lines to Salt Lake City, Utah; Barton Truck Line.
- (11) Fall Cities Transfer & Storage Co. to Louisville, Kentucky; Hayes Freight Lines to Chicago, Illinois; Watson Bros. to Denver, Colorado; Boulder Truck Service - Ringsby Truck Lines to Salt Lake City, Utah; Salt Lake Transfer.

The Riss rate during the periods of the "B", "C" and "D" shipments was established in Riss Section 22 Quotation No. AEF-2-TC, AEF-4-TC, 934-55 and in Uintah Freight Lines Section 22 Quotation No. 41 via the following routes:

- (12) Route (1) above.
- (13) Adkins Transfer to Jeffersonville, Indiana; Riss & Co. to Denver, Colorado; Bee Freight Lines to Apache, Utah; Eastern Utah Trans-Uintah Freight Lines to Salt Lake City, Utah; Salt Lake Transfer.
- (14) Adkins Transfer to Jeffersonville, Indiana; Riss & Co. to Denver, Colorado; Bee Freight Lines to Apache, Utah; Eastern Utah Transportation-Uintah Freight Lines to Salt Lake City, Utah; Barton Truck Line.
- (15) Adkins Transfer to Jeffersonville, Indiana; Riss & Co. to Denver, Colorado; Pacific Intermountain Express. This route was effective November 19, 1955.

The identical rate for the period of the "B", "C" and "D" shipments was established in Rocky Mountain Tariff Bureau Section 22 Quotation No. 43-D via routes 2, 3, 4, 7, 8, 9, with the addition of the following competitive routes:

- (16) Adkins Transfer to Louisville, Kentucky; Hayes

Freight Lines to Chicago, Illinois; Watson Bros. to Denver, Colorado; Goldstein Refrigerator Line - Ringsby Truck Lines to Salt Lake City, Utah; Barton Truck Line.

(17) Adkins Transfer to Louisville, Kentucky; Hayes Freight Lines to Chicago, Illinois; Watson Bros. to Denver, Colorado; Goldstein Refrigerator Line - Ringsby Truck Line to Salt Lake City, Utah; Salt Lake Transfer.

(18) Fall Cities Transfer & Storage to Louisville, Kentucky; Hayes Freight Lines to Chicago, Illinois; Watson Bros. to Denver, Colorado; Goldstein Refrigerator Line - Ringsby Truck Lines to Salt Lake City, Utah; Barton Truck Line.

(19) Fall Cities Transfer & Storage to Louisville, Kentucky; Hayes Freight Lines to Chicago, Illinois; Watson Bros. to Denver, Colorado; Goldstein Refrigerator Line - Ringsby Truck Lines to Salt Lake City, Utah; Salt Lake Transfer.

The following counterclaimants participated in routes during the "A", "B", "C" and "D" period which would have enabled them to perform this service, and offered to perform such service during the "A" period at a rate of \$5.313 per 100 pounds (AAR No. 14-A), during the "B" period at a rate of \$5.12 per 100 pounds (WTL - 854), during the "C" period at a rate of \$4.50 per 100 pounds (WTA-76) and during the "D" period at a rate of \$4.77 per 100 pounds (WTA-76):

Pennsylvania

Union Pacific

Under the existing policies of the military establishment and the then applicable division agreements between rail carriers, each would have received

the following revenues from the traffic transported by Riss:

Pennsylvania	\$13,180.76
Union Pacific	58,634.39

Indiana Arsenal, Charlestown, Indiana
to
Wingate Ordnance Depot, Wingate, N. M.

Shipments per Revised Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
May 23, 24, 25, 26, 27	1955	300,300	525
May 31	"	90,090	"
Sept. 19, 20	"	90,636	"
Sept. 22, 23	"	151,060	"
Sept. 27, 28, 29, 30	"	332,332	"
Oct. 3, 4	"	74,308	"

The Riss rate was established by Riss Section 22 Quotation No. AEF-2-TC via the following route:

- (1) Adkins Transfer to Jeffersonville, Indiana; Riss
to Denver; Navajo to Wingate.

The identical rate for other motor carriers was established in Rocky Mountain Motor Tariff Bureau Quotation No. 43-D via the following competing routes:

- (2) Falls Cities to Louisville; Hayes to St. Louis;
Strickland to Amarillo; Navajo to Wingate.
- (3) Mid-Continent to Oklahoma City; Lee Way to
Amarillo; Navajo to Wingate.

The following counterclaimants participated in routes which would have enabled them to perform this service, and offered to perform it at a through rate of \$5.911 per cwt. (AAR Quot. No. 14-A):

Pennsylvania Railroad
Atchison, Topeka & Santa Fe

Under the existing policies of the military establishment and the applicable division agreements among rail carriers, each would have received the

following revenues from traffic transported by Riss:

Pennsylvania Railroad	\$5,065.86
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Atchison, Topeka & Santa Fe	51,267.37
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Crane (N. A. D.), Indiana
to
Sunflower Ordnance, De Soto, Kansas

Shipments per Revised Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Nov. 2, 3, 4, 5	1954	284,670	168
Nov. 8	1954	57,400	168
Nov. 10	1954	57,050	168
Nov. 15, 16, 17, 18, 19	1954	424,940	168
Nov. 22	1954	56,900	168
Nov. 24	1954	113,650	168
Nov. 30	1954	86,200	168
Dec. 1, 2, 3, 4	1954	396,240	168

The Riss rate was established in Riss Section 22 Quotation No. AEF-1 via the following route:

- (1) B. B. & L. Motor Freight, Inc., to Terre Haute,
Indiana; Riss & Co.

The identical rate was established in Watson Bros. Section 22 Quotation No. 1000 via the following competing route:

- (2) Hayes Freight Lines to Chicago or Peoria, Illinois,
or St. Louis, Missouri; Watson Bros.

The following counterclaimants participated in routes which would have enabled them to perform this service, and offered to perform such service at a through rate of \$1.886 per 100 pounds (AAR 14-A):

Chicago, Milwaukee, St. Paul & Pacific
Atchison, Topeka & Santa Fe

Under the existing policies of the military establishment and the then applicable

division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Chicago, Milwaukee, St. Paul & Pacific	\$22,759.30
Atchison, Topeka & Santa Fe	5,097.86

Naval Ammunition Depot, Crane, Indiana
to

Port Chicago, California

Shipments per Revised Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Dec. 11,	1956	137,560	641

The Riss rate was established in Riss Section 22 Quotation No. AEF-2-TC and in Uintah Section 22 Quotation No. 41. The following routes were set forth in AEF-2-TC:

- (1) BB&I Motor Freight to Terre Haute, Ind.;
Riss to Denver; Denver-Chicago to Los Angeles; Sacramento Freight Lines to Port Chicago.
- (2) BB&I to Terre Haute; Riss to Denver;
Ashworth to Salt Lake City; Inland Freight to Port Chicago.
- (3) BB&I to Terre Haute; Riss to Denver;
Ashworth to Reno; Wells Cargo to Port Chicago.
- (4) BB&I to Terre Haute; Riss to Denver; Bee
Freight Lines to Apache, Utah; Eastern Utah
and Uintah to Salt Lake City; Inland to Port
Chicago.
- (5) BB&I to Terre Haute; Riss to Denver; Pacific
Intermountain Express to Port Chicago.
- (6) BB&I to Terre Haute; Riss to Denver; Rio
Grande to Grand Junction, Colo.; Garrett to
Sacramento; Sacramento Freight Lines to Port
Chicago.

The Uintah quotation specified route (4) above.

The identical rate was established in Rocky Mountain Motor Tariff Bureau Section 22 Quotation No. 52 over the following routes:

- (7) BB&I to Terre Haute; Lovelace Truck Service to St. Louis; Strickland to Dallas; Sunset to El Paso; Western to Oakland or San Francisco; Doyle Draying to Port Chicago.
- (8) BB&I to Terre Haute; Lovelace to St. Louis; Strickland to Dallas; Gillette to El Paso; Western to Oakland or San Francisco; Doyle to Port Chicago.
- (9) Hayes to Chicago; Watson Bros. to Denver; Gallagher to Salt Lake City; Ringsby to Reno; Nevada-California to Port Chicago.
- (10) Hayes to Chicago; Consolidated to Oakland; Doyle Draying to Port Chicago.
- (11) Hayes to Chicago; Watson to Denver; Goldstein Refrigerator and Ringsby to Salt Lake City; Inland to Port Chicago.
- (12) Hayes to Chicago; Watson to Denver; Gallagher to Salt Lake City; Inland to Port Chicago.
- (13) Mid-Continent to Oklahoma City; Lee Way to Amarillo; Navajo to Manteca, Cal.; Wells Cargo to Port Chicago.
- (14) Mid-Continent to Oklahoma City; Gillette to El Paso; Western to Oakland or San Francisco; Doyle Draying to Port Chicago.
- (15) Mid-Continent to Oklahoma City; T. L. M. E. to Azusa, Cal.; Constructors Transport to Port Chicago.

(16) Mid-Continent to Oklahoma City; Lee Way to
Amarillo; Navajo to Manteca; Central Trucking
to Port Chicago.

(17) Mid-Continent to Oklahoma City; T. I. M. E. to
Azusa; Sacramento Freight Line to Port Chicago.

The following counterclaimants participated in routes which would
have enabled them to perform this service, and offered to perform such serv-
ice at a through rate of \$6.41 per cwt. (TCFB Section 22 Quotation No. 227):

Chicago, Milwaukee, St. Paul & Pacific
Atchison, Topeka & Santa Fe
Southern Pacific

Under the existing policies of the military establishment and the applicable
division agreements between rail carriers each would have received the
following revenues from the traffic transported by Riss:

CMStP&P	\$2,416.02
AT&SF	3,200.79
SP	1,710.61

Sunflower Ordnance, De Soto, Kansas
to

Ravenna Ordnance, Atlas, Ohio

Shipments per Revised Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Jan. 3, 4	1955	197,294	235
Jan. 24, 25	1955	193,678	235
Jan. 28, 29, 30	1955	90,210	235
Feb. 7, 8	1955	82,904	235
Feb. 24, 25, 26	1955	244,401	235
Feb. 28	1955	61,304	235
Mar. 27	1955	91,956	235
Mar. 29, 30, 31	1955	122,480	235
Apr. 11	1955	123,384	235

<u>Date,</u>		<u>Quantity</u>	<u>Rate</u>
Sept. 1	1955	92,150	235
Sept. 6	1955	60,618	235
Sept. 9	1955	60,618	235
Sept. 13	1955	61,304	235
Sept. 19	1955	61,498	235
Sept. 22	1955	61,304	235
Sept. 27, 28	1955	122,608	235
Oct. 6	1955	60,982	235

The Riss rate was established in Riss Section 22 Quotation Nos. AEF-1 and AEF-3-ECD via the following route:

- (1) Direct Riss & Co. service.

The identical rate was established in Watson Bros. Section 22 Quotation No. 1000 via the following competing route:

- (2) Watson Bros. to Chicago, Ill.; Hayes Freight Lines to Akron, Ohio; Direct Trans. Co.

The identical rate was also established via:

- (3) All motor carriers party to Middlewest Motor

Freight Bureau Tariff Section 22 Quotation No. 303-E.

The following counterclaimants participated in routes which would have enabled them to perform the service, and offered to perform such service at a through rate of \$2.507 per 100 pounds (AAR No. 14-A):

Atchison, Topeka & Santa Fe

Pennsylvania Railroad

Under the existing policies of the military establishment and the then applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Atchison, Topeka & Santa Fe	\$26,457.09
Pennsylvania Railroad	6,128.48

Sunflower Ordnance, De Soto, Kansas
to

Crane (N. A. D.), Indiana

Shipments per Revised Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Feb. 18	1954	183,181	168
April 8, 9, 10	1954	406,376	168
April 27, 28, 29	1954	201,634	168
May 15, 16	1954	201,634	168
May 25, 26	1954	201,634	168
Oct. 18, 19, 20, 21, 22, 23	1954	424,064	168
Oct. 25, 26, 27	1954	241,782	168
Oct. 30, 31	1954	60,088	168
Nov. 1	1954	57,574	168

The Riss rate was established in Riss Section 22 Quotation Nos. 495-54, 530-54 and AEF-1 via the following route:

(1) Direct Riss service.

The identical rate was established in Watson Bros. Section 22 Quotation No. 1000, effective July 20, 1954, and No. 911 via the following competing route:

(2) Watson Bros. to Chicago or Peoria, Illinois,
or St. Louis, Mo.; Hayes Freight Lines.

The following counterclaimants participated in routes which would have enabled them to perform this service, and offered to perform such service at a through rate of \$1.886 per 100 pounds (AAR No. 14-A):

Atchison, Topeka & Santa Fe

Chicago, Milwaukee, St. Paul & Pacific

Under the existing policies of the military establishment and the applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Atchison, Topeka & Santa Fe	\$27,232.22
Chicago, Milwaukee, St. Paul & Pacific	10,072.19

Sunflower Ordnance, De Soto, Kansas
to
Indian Head Junction (N. A. D.), Maryland

Shipments per Revised Schedule B

"A"

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Apr. 14, 15, 16, 17, 18	1954	270,864	276
Apr. 21, 22, 23, 24	1954	241,456	276
Apr. 27, 28	1954	120,384	276
Apr. 30	1954	91,374	276
May 1, 2, 3	1954	121,383	276
May 5, 6, 7, 8, 9	1954	212,763	276
May 12, 13	1954	121,930	276
May 15, 16	1954	121,382	276
May 19	1954	60,690	276
May 21	1954	91,540	276
May 24, 25, 26	1954	184,644	276
May 28, 29, 30, 31	1954	152,086	276
June 2, 3,	1954	91,251	276
June 5, 6	1954	121,668	276
June 10, 11, 13, 14	1954	245,189	276
June 16, 17, 18, 19, 20	1954	275,023	276
June 23, 24, 25	1954	153,286	276
July 3, 4	1954	91,560	276
July 7, 8, 9, 10, 11	1954	151,902	276
July 14, 15, 16, 17, 18, 19	1954	332,569	276
July 21	1954	60,517	276
July 24, 25, 26, 27, 28, 29, 30, 31	1954	548,282	276

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Aug. 4, 5, 6, 7, 8	1954	275, 076	276
Aug. 12	1954	61, 128	276
Aug. 14, 15, 16	1954	122, 256	276
Aug. 24, 25, 26	1954	241, 920	276
Aug. 28, 29, 30, 31	1954	212, 023	276
Sept. 2, 3	1954	122, 599	276
Sept. 8, 9, 10, 11, 12	1954	337, 176	276
Sept. 15, 16, 17, 18, 19	1954	245, 376	276
Sept. 22, 23, 24, 25, 26	1954	305, 112	276
Sept. 29, 30	1954	182, 597	276
Oct. 6, 7	1954	91, 621	276
Oct. 9, 10	1954	121, 731	
Oct. 12, 13, 14, 15, 16, 17	1954	213, 204	276
Oct. 20, 21	1954	60, 865	276
Oct. 23, 24, 25	1954	121, 731	276
Oct. 29, 30	1954	121, 732	276
Nov. 5, 6, 7	1954	182, 597	276
Nov. 10, 11, 12, 13, 14	1954	182, 596	276
Nov. 17, 18, 19, 20, 21	1954	152, 164	276
Dec. 1, 2, 3, 4, 5	1954	215, 659	276
Dec. 8, 9, 10, 11, 12	1954	430, 449	276
Dec. 15, 16	1954	150, 876	276
Jan. 5, 6, 7, 8, 9	1955	180, 576	276
Jan. 12, 13, 14, 15, 16	1955	150, 120	276
Jan. 19, 20	1955	60, 048	276
Jan. 26, 27, 28	1955	120, 096	276
Feb. 6	1955	60, 048	276
Feb. 9	1955	57, 132	276
Feb. 17	1955	61, 776	276

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Feb. 20	1955	61,776	276
Feb. 25	1955	61,738	276
Mar. 2	1955	69,411	276
Mar. 4	1955	69,412	276
Mar. 11	1955	134,986	276
Mar. 16	1955	67,492	276
Mar. 18	1955	67,493	276
Mar. 23	1955	67,493	276
Apr. 6	1955	67,493	276
Apr. 8	1955	67,493	276
Apr. 13	1955	67,492	276
Apr. 15	1955	67,503	276
Apr. 22	1955	67,493	276
Apr. 27	1955	67,492	276
Apr. 30	1955	67,394	276
May 6	1955	67,435	276
May 8	1955	67,435	276
May 13	1955	67,436	276
May 15	1955	67,436	276
May 20	1955	67,435	276
May 27	1955	163,159	276
June 9, 10	1955	129,070	276
June 15, 16, 17	1955	129,069	276
June 22	1955	61,748	276
June 24	1955	67,321	276
July 8	1955	64,702	276
July 10	1955	64,702	276
July 15	1955	64,702	276
July 17	1955	64,608	276

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
July 22	1955	64,579	276
July 29	1955	64,580	276
Aug. 7	1955	64,580	276
Aug. 10	1955	66,090	276
Aug. 12	1955	64,580	276
Aug. 14	1955	64,580	276

"B"

Feb. 7	1956	66,340	259
Feb. 9, 10, 11	1956	99,510	259
Feb. 14, 15	1956	66,340	259
Feb. 23, 24	1956	99,392	259
Feb. 27	1956	64,347	259

The Riss rate applicable during the period of the "A" movements was established in 494-54, 515-54, AEF-1, 789-54 and AEF-3-ECD via the following routes:

- (1) Riss & Co. to Baltimore, Md.; Bailey's Express.
- (2) Riss & Co. to Baltimore, Md.; Wooleyhan Transport.

This route was effective December 20, 1954.

The identical rate applicable during the period of the "A" movements was also established in Watson Bros. Section 22 Quotation No. 921 via the following competing route:

- (3) Watson Bros. Transportation Co., Inc., to Peoria, Ill.; Hayes Frt. Lines to Cincinnati, Ohio.; C. L. Whitten Transfer Co., to Alexandria, Va.; Wooleyhan Transport.

The identical rate applicable during the period of the "A" movements was also established effective March 21, 1955, in Hughes Transportation Co. Section 22 Quotation No. 204 via the following competing route:

- (4) Tri-State Warehousing & Distributing Co., Hayes

Frt. Lines, Hughes Transportation Co.

The Riss rate applicable during the period of the "B" shipments was established in Riss Section 22 Quotation No. AEF-5-ECD via the following competing routes:

(5) Route (1) above.

(6) Route (2) above.

The identical rate applicable during the period of the "B" shipments was established in Watson Bros. Section 22 Quotation No. 1000 via the following competing route:

(7) Watson Bros. Transportation Co. to Chicago or
Peoria, Ill.; Hayes Frt. Lines to Cincinnati, Ohio;
C. L. Whitten Transfer Co., Wooleyhan Transport.

The following counterclaimants participated in routes which would have enabled them to perform the service, and offered to perform such service at a through rate during the period of the "A" movements of \$3.0590 per 100 pounds (AAR No. 14-A) and during the period of the "B" movements a through rate of \$2.59 per 100 pounds (WTA No. 76):

Atchison, Topeka & Santa Fe

Pennsylvania Railroad

Under the existing policies of the military establishment and the then applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Atchison, Topeka & Santa Fe	\$160,294.58
Pennsylvania Railroad	195,915.60

Sunflower Ordnance, De Soto, Kansas
to

Joliet Arsenal, Joliet, Illinois

Shipments per Revised Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Sept. 10	1954	145,406	166
April 13, 14	1955	92,169	166
April 16, 17	1955	92,169	166

The Riss rate was established in Riss Section 22 Quotation Nos. 544-44 and AEF-3-ECD via:

- (1) Direct Riss service.

The identical rate during this period for other motor carriers was established in Watson Bros. Quotation No. 1000 over the following competing routes:

- (2) Watson Bros. to Chicago, Illinois; Roy Cartage.
- (3) Watson Bros. to Chicago or Peoria, Illinois, or St. Louis, Mo.; Hayes Freight Lines.

The identical rate was also established via all motor carriers party to Middlewest Motor Tariff Bureau Section 22 Quotation No. 303-E effective December 10, 1954.

The following counterclaimants participated in routes which would have enabled them to perform this service and offered to perform it at a through rate of \$1.817 per 100 pounds (AAR Quotation 14-A):

Atchison, Topeka & Santa Fe
Chicago, Milwaukee, St. Paul & Pacific
Wabash

Under the existing policies of the military establishment and the then applicable division agreements among rail carriers, each would have received the following revenues from the traffic transported by Riss:

Atchison, Topeka & Santa Fe	\$2,621.26
Chicago, Milwaukee, St. Paul & Pacific	1,123.40
Wabash	1,123.40

Sunflower Ordnance, De Soto, Kansas
to
Kingsbury Ordnance, Kingsbury, Indiana
Shipments per Revised Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Jan. 27	1955	108,252	175

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Feb. 25	1955	81,368	175
March 8, 9	"	115,624	"

The Riss rate was established in Riss Section 22 Quotation No. AEF-1 via:

(1) Direct Riss service.

The identical rate was established in Watson Bros. Section 22 Quotation No. 1000 via the following competing routes:

(2) Watson Bros. to Chicago, Illinois; Hayes
Freight Lines to South Bend, Indiana;
Clemans Truck Line, Inc.

The following counterclaimants participated in routes which would have enabled them to perform this service, and offered to perform such service at a through rate of \$1.978 per 100 pounds (AAR No. 14-A):

Santa Fe
Wabash

Under the existing policies of the military establishment and the applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Santa Fe	\$4,649.05
Wabash	694.34

Sunflower Ordnance Works, De Soto, Kansas
to
Naval Ammunition Depot, Shumaker, Arkansas

Shipments per Revised Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
March 7, 8, 9, 10	1954	330,324	192
March 15, 16, 17	"	150,150	"
March 19, 20, 21, 22, 23	"	300,194	"
April 6, 7	"	272,141	"
April 10, 11, 12, 13, 14	"	904,655	"

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
April 17, 18	1954	90,405	192
May 4, 5	"	181,076	"
May 29, 30	"	121,520	"
June 4	"	120,267	"
June 13, 14, 15	"	241,817	"
June 25, 26	"	121,520	"
July 12, 13	"	121,520	"
July 24	"	60,760	"
Aug. 1	"	150,538	"
Aug. 7, 8	"	59,615	"
Aug. 10, 11	"	151,900	"
Aug. 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25	"	1,694,892	"
Aug. 27		151,357	"
Aug. 29, 30, 31	"	421,565	"
Sept. 1, 2	"	182,280	"
Sept. 7, 8	"	271,891	"
Sept. 11, 12, 13, 14, 15	"	876,612	"
Sept. 18, 19, 20, 21, 22	"	633,417	"
Sept. 25, 26, 27, 28, 29	"	785,603	"
Oct. 2, 3, 4, 5, 6	"	882,589	"
Oct. 8, 9, 10, 11, 12, 13	"	1,216,721	"
Oct. 16, 17, 18, 19, 20	"	730,800	"
Oct. 23, 24, 25, 26, 27	"	363,510	"
Oct. 29, 30, 31	"	180,705	"
Nov. 2, 3	"	122,010	"
Nov. 7, 8, 9, 10	"	305,760	"
Nov. 13, 14, 15, 16, 17	"	304,325	"

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Nov. 20, 21, 22, 23	1954	240, 870	192
Nov. 29, 30	"	91, 140	"
Dec. 4, 5, 6, 7, 8	"	334, 180	"
Dec. 11, 12, 13, 14, 15	"	302, 622	"
Dec. 18, 19, 20, 21	"	243, 005	"
Dec. 27, 28	"	120, 475	"
Jan. 3, 4, 5	1955	182, 280	"
Jan. 8, 9, 10, 11, 12	"	302, 545	"
Jan. 15, 16, 17, 18, 19	"	302, 015	"
Jan. 22, 23, 24, 25, 26	"	211, 712	"
Jan. 28, 29, 30, 31	"	181, 160	"
Feb. 2	"	61, 390	"
Feb. 5, 6, 7, 8, 9	"	211, 549	"
Feb. 12, 13, 14, 15, 16	"	212, 450	"
Feb. 19, 20	"	91, 140	"
Feb. 23	"	59, 461	"
Feb. 26, 27, 28	"	210, 363	"
March 5, 6, 7, 8, 9	"	212, 660	"
March 12, 13, 14, 15, 16	"	240, 843	"
March 19, 20, 21, 22, 23	"	210, 367	"
March 26, 27, 28, 29, 30	"	243, 040	"
April 2, 3	"	120, 370	"
April 5, 6	"	91, 140	"
April 9	"	60, 760	"
April 12, 13	"	91, 140	"
April 16, 17	"	91, 140	"
April 19	"	90, 431	"
April 23, 24, 25, 26, 27	"	240, 939	"
April 29, 30	"	120, 409	"

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
May 4	1955	59,640	192
May 7, 8, 9, 10, 11	"	211,945	"
May 14, 15, 16, 17, 18	"	243,040	"
May 21, 22, 23, 24	"	182,280	"
May 31	"	60,760	"
June 5, 6, 7, 8	"	182,280	"
June 11	"	60,760	"
June 13, 14, 15	"	210,351	"
June 19, 20, 21	"	179,970	"
June 25, 26, 27	"	120,418	"
June 29	"	120,295	"
July 6	"	121,520	"
July 10	"	121,520	"
July 12	"	120,339	"
July 16	"	121,520	"
July 18	"	121,520	"
July 20	"	151,900	"
July 24	"	121,520	"
July 26	"	60,760	"
July 29, 30	"	151,900	"
Aug. 3	"	91,140	"
Aug. 7	"	91,140	"
Aug. 9	"	90,011	"
Aug. 13	"	89,653	"
Aug. 17	"	91,140	"
Aug. 21	"	91,140	"
Aug. 27	"	91,140	"
Aug. 29	"	91,140	"
Aug. 31	"	91,140	"

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Sept. 7	1955	89,769	192
Sept. 11	"	89,714	"
Sept. 13	"	88,686	"
Sept. 17	"	89,548	"
Sept. 19	"	89,679	"
Sept. 21	"	91,140	"
Oct. 2	"	91,140	"
Oct. 4	"	91,140	"
Oct. 8	"	91,140	"
Oct. 15	"	89,941	"
Oct. 22	"	91,140	"
Oct. 26	"	91,140	"
Nov. 1, 2	"	120,260	"
Nov. 28, 29	"	181,090	"

The Riss rate was established during the period prior to October 1, 1954 in Riss Section 22 Quotation No. 437-53; during the period from October 1, 1954 through March 31, 1955 in Riss Section 22 Quotation No. AEF-1; and during the period after February 28, 1955 in Riss Section 22 Quotation No. AEF-3-ECD, over the following route:

- (1) Riss & Co. to Kansas City, Mo.; Arkansas
Motor Freight to Shumaker, Arkansas.

The identical rate was established in Middlewest Motor Freight Bureau Section 22 Quotation No. 303-D to December 10, 1954, and continued thereafter in Middlewest Motor Freight Bureau Section 22 Quotation No. 303-E over the following competing routes:

- (2) Lee Way Motor Freight, Inc.; Arkansas Motor
Freight Lines.
- (3) Lee Way Motor Freight, Inc. to Dallas, Texas;
Southwestern Transportation Co. This route was
effective March 15, 1954.

The identical rate was also established in Watson Bros. Section 22 Quotation No. 1000 via the following competing routes:

- (4) Watson Bros. to Kansas City, Mo.; Missouri-Arkansas Transportation Co.
- (5) Watson Bros. to Kansas City, Mo.; Gillette Motor Transportation, Inc. to Dallas, Texas; Herrin Transportation Co.
- (6) Watson Bros. to Kansas City, Mo.; Lee Way Motor Freight to Dallas, Texas; Herrin Transportation Co.
- (7) Watson Bros. to Kansas City, Mo.; Southern Express, Inc. to Dallas, Texas; Herrin Transportation Co.
- (8) Watson Bros. to Kansas City, Mo.; Powell Bros. Truck Lines to Little Rock, Arkansas; Southwestern Transportation Co. This route was effective December 1, 1954.

The following counterclaimants participated in routes which would have enabled them to perform this service, and offered to perform such service at a through rate of \$2.4495 per 100 pounds (AAR No. 14-A) to October 20, 1955 and thereafter at a through rate of \$2.07 per 100 pounds (WTA No. 76):

Santa Fe

Chicago, Rock Island & Pacific

Under the existing policies of the military establishment and the applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Santa Fe	\$174,639.89
Chicago, Rock Island & Pacific	154,499.74

Sunflower Ordnance Plant, De Soto, Kansas
to
Iowa Ordnance Depot, West Burlington, Iowa
Shipments per Revised Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
March 11, 12, 15, 16, 18, 19, 21	1954	608, 125	127
Nov. 1, 2	1954	82, 324	127
Dec. 27, 28	1954	138, 128	127
Jan. 9, 10, 11	1955	193, 872	127
Jan. 31	1955	120, 280	127
Feb. 15	1955	60, 156	127
Feb. 17, 18	1955	146, 924	127
Feb. 28	1955	61, 886	127
March 2	1955	61, 692	127
March 7	1955	61, 692	127
March 10	1955	61, 370	127
March 18	1955	61, 692	127
April 17	1955	54, 902	127
April 19	1955	83, 680	127
April 26	1955	55, 484	127
May 24	1955	150, 998	127
June 12	1955	60, 788	127
June 19	1955	58, 460	127
June 23	1955	55, 484	127
July 5	1955	61, 304	127
July 10	1955	60, 982	127
July 14	1955	61, 304	127
July 24	1955	61, 304	127
July 28	1955	61, 176	127
August 7	1955	60, 982	127

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
August 11	1955	60,304	127
August 18	1955	60,982	127
August 29	1955	61,304	127
September 7	1955	59,752	127
September 14	1955	59,427	127
September 21	1955	59,752	127
September 28	1955	59,752	127
October 5	1955	59,427	127
October 12, 13	1955	59,752	127

The Riss rate was established in Riss Section 22 Quotation Nos. 530-54, AEF-1, and AEF-3-ECD for direct Riss service.

The identical rate was established by Watson Bros., for direct service, in its Section 22 Quotation No. 1000, and, beginning December 10, 1954, by the participants in Section 2 of Middlewest Motor Freight Bureau Section 22 Quotation No. 303-E.

The following counterclaimants participated in routes which would have enabled them to perform this service, and offered to perform it at a through rate of \$1.357 per 100 pounds (AAR Quotation No. 14-A):

Atchison, Topeka & Santa Fe

Chicago, Burlington & Quincy

Under the existing policies of the military establishment and the then applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Atchison, Topeka & Santa Fe	\$34,009.00
Chicago, Burlington & Quincy	7,874.00

Fort Riley, Kansas
to
Pueblo Ordnance Depot, Avondale, Colorado

Shipments per Revised Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
March 3, 4	1955	120,355	203
March 9	1955	62,240	203

The Riss rate was established in Riss Section 22 Quotation No. AEF-3-ECD
via:

Direct Riss service.

The identical rate was established via all motor carriers party to
Middlewest Motor Freight Bureau Section 22 Quotation No. 303-E.

The following counterclaimants participated in routes which would have
enabled them to perform this service, and offered to perform such service
at a through rate of \$2.1735 per 100 pounds (AAR No. 14-A):

Union Pacific

Atchison, Topeka & Santa Fe

Missouri Pacific

Under the existing policies of the military establishment and the applicable
division agreements between rail carriers, each would have received the
following revenues from the traffic transported by Riss:

Union Pacific	\$1,944.66
Atchison, Topeka & Santa Fe	674.68
Missouri Pacific	1,349.36

Kansas Ordnance Depot, Parsons, Kansas
to

Ravenna Ordnance Depot, Atlas, Ohio

Shipments per Revised Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Nov. 19	1954	138,816	254
Mar. 2	1955	60,300	254

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Mar. 10	1955	83,475	254
Apr. 22	1955	216,641	254
June 13	1955	55,177	254
June 15	1955	56,256	254
June 17	1955	55,552	254

The Riss rate was established pursuant to Riss Section 22 Quotation Nos. 474-54 and AEF-3-ECD via:

(1) Direct Riss service.

The identical rate was established in Mid Continent Freight Lines Section 22 Quotation No. 222-54 via the following competing route:

(2) Missouri-Arkansas Transportation Co. to Duenweg,
Mo.; Mid Continent Freight Lines to Seneca, Ill.;
C. L. Whitten Transfer Co.

The following counterclaimants participated in routes which would have enabled them to perform the service, and offered to perform such service for the November, 1954, March and April, 1955, movements at a through rate of \$2.75 per 100 pounds (WTL 854) and for the June, 1955, movements a through rate of \$2.54 per 100 pounds (WTL 854. Supp. 16).

St. Louis-San Francisco
Missouri-Kansas-Texas
Pennsylvania Railroad

Under the existing policies of the military establishment and the then applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

St. Louis- San Francisco	\$3,953.48
Missouri-Kansas-Texas	3,953.47
Pennsylvania Railroad	3,354.45

Kansas Ordnance Depot, Parsons, Kansas
to
Pueblo Ordnance Depot, Avondale, Colorado

Shipments per Revised Schedule B
"A"

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
March 30	1954	299, 949	226
June 18	"	526, 452	"
June 21, 22, 23	"	877, 431	"
July 20, 21, 22	"	397, 800	"
July 26	"	122, 400	"

"B"

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Feb. 14, 15, 16, 17, 18	1955	397, 800	226
Feb. 21, 22, 23, 24, 25	"	336, 600	"
Feb. 28	"	153, 000	"
March 1, 2, 3	"	275, 400	"
March 7, 8, 9, 10, 11	"	336, 600	"

The Riss rate for the applicable period of the "A" and "B" shipments was established in Riss Section 22 Quotation No. 463-53, AEF-1 and AEF-3-ECD via:

(1) Direct Riss service.

The identical rate for the applicable periods of the "A" and "B" shipments was established in Watson Bros. Section 22 Quotation No. 1000 via the following competing route:

(2) Campbell "66" Express to Kansas City, Mo.

Watson Bros. to Pueblo, Colo.; Gottula
Trucking & Transportation Co.

The identical rate for the applicable period of the "B" shipments was established via all motor carriers party to Middlewest Motor Freight Bureau Section 22 Quotation No. 303-E.

The following counterclaimants participated in routes which would have enabled them to perform this service, and offered to perform such service during the period of the "A" shipments at a through rate of \$2.4265 per 100 pounds (AAR No. 14-A) and during the period of the "B" shipments at a through rate of \$2.26 per 100 pounds (WTL No. 921):

St. Louis-San Francisco
Missouri-Kansas-Texas
Missouri Pacific
Santa Fe

Under the existing policies of the military establishment and the applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

St. Louis-San Francisco	\$8,785.25
Missouri-Kansas-Texas	8,785.25
Missouri Pacific	35,141.04
Santa Fe	35,141.04

Kansas Ordnance Plant, Parsons, Kansas
to
Navajo Ordnance Depot, Bellemont, Arizona

Shipments per Revised Schedule B

		<u>"A"</u>	
<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Nov. 8, 9, 10, 11	1954	122,400	393
Nov. 15, 16, 17	1954	153,000	"

		<u>"B"</u>	
<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Jan. 18, 19, 20	1955	183,600	393
Jan. 24, 25, 26	1955	183,600	"

The Riss rate applicable to the "A" shipments shown above was established in Riss Section 22 Quotations Nos. 710-54 and AEF-1 over the following route:

- (1) Riss to Denver, Colorado; Denver-Chicago
Trucking to Bellemont.

The Riss rate applicable to the "B" shipments shown above was established in Riss Section 22 Quotations Nos. 823-55 and AEF-1 over the route shown above and over the following route:

- (2) Riss to Denver, Colorado; Ashworth Transfer
to Salt Lake City; Salt Lake Transfer to Bellemont.

The identical rate was established in Rocky Mountain Motor Tariff Bureau Section 22 quotation 43-C for the "A" shipments and in Quotations 43-C and 43-D for the "B" shipments over the following routes:

- (3) American Transfer & Storage to Tulsa;
Lee Way Motor Freight to Amarillo, Texas;
Navajo Freight Line to Bellemont.
- (4) American Transfer & Storage to Tulsa; Gillette
Motor Transport to El Paso, Texas; Alabam Freight
Lines to Bellemont.
- (5) Campbell "66" Express to Tulsa; Lee Way to
Amarillo; Navajo to Bellemont.
- (6) Campbell "66" Express to Tulsa; Gillette to
El Paso; Alabam to Bellemont.
- (7) Missouri-Arkansas Transportation to Joplin,
Mo.; Yellow Transit to Amarillo; Navajo to
Bellemont.
- (8) Missouri-Arkansas to Joplin; Southern Plaza
Express to El Paso; Alabam to Bellemont.
- (9) Missouri-Arkansas to Joplin; Frisco Transporta -
tion to Oklahoma City; T. I. M. E. to El Paso;
Alabam to Bellemont.
- (10) Missouri-Arkansas to Kansas City; Watson Bros.
to Denver; Denver-Chicago to Bellemont.

The following counterclaimants participated in routes which would have enabled them to perform such service, and offered to perform such service at a through rate of \$4.416 per cwt. (AAR Quotation No. 14-A):

St. Louis-San Francisco

Missouri-Kansas-Texas

Atchison, Topeka & Santa Fe

Under the existing policies of the military establishment and the applicable division agreements between rail carriers, these counterclaimants would have received the following revenues with respect to the transportation performed by Riss:

St. L-S.F. \$1,276.98

M-K-T 1,276.97

AT&SF 25,823.27

Kansas Ordnance Depot, Parsons, Kansas
to
Letterkenney Ordnance, Culbertson, Pennsylvania

Shipments per Revised Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
March 16	1954	390,000	281

The Riss rate was established in Riss Section 22 Quotation No. 527-54 via:

(1) Direct Riss service.

The identical rate was established in Missouri-Arkansas Transportation Co. Section 22 Quotation No. 201-53 via the following competing route:

(2) Missouri-Arkansas Transportation Co. ;
Mid-Continent Freight Lines; Falls Cities
Transfer & Storage; C. I. Whitten.

The identical rate was also established in Tri-State Warehousing & Distributing Co. Section 22 Quotation No. 200-53 via the following competing route:

(3) Tri-State Warehousing & Distributing Co. ;
Mid-Continent Freight Lines; Falls Cities
Transfer & Storage Co. ; C. I. Whitten.

The following counterclaimants participated in routes which would have enabled them to perform the service, and offered to perform such service at a through rate of \$3.01 per 100 pounds (WTL No. 740):

St. Louis-San Francisco

Missouri-Kansas-Texas

Under the existing policies of the military establishment and the then applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

St. Louis-San Francisco	\$2,230.41
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Missouri-Kansas-Texas	2,230.41
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Kansas Ordnance Depot, Parsons, Kansas
to

Sioux Ordnance Depot, Sidney, Nebraska

Shipments per Revised Schedule B

<u>Date</u>		<u>"A"</u>	<u>Quantity</u>	<u>Rate</u>
Aug. 24, 25, 26	1954		336,600	211
Aug. 30, 31	1954		183,600	211
Sept. 1, 2	1954		183,600	211
Sept. 7, 8, 9	1954		275,400	211
Sept. 13	1954		91,800	211
		<u>"B"</u>		
Sept. 14	1954		91,800	211
Sept. 15, 16	1954		183,600	211
Sept. 20, 21, 22, 23	1954		367,200	211
Sept. 27, 28, 29, 30				
Oct. 1	1954		367,200	211
Oct. 5, 6, 7, 8	1954		428,400	211
Oct. 11, 12, 13, 14	1954		367,200	211
Oct. 18, 19, 20, 21	1954		397,800	211
Oct. 25, 26, 27, 28, 29	1954		367,200	211

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Nov. 1, 2, 3	1954	122,400	211
Nov. 5	1954	61,200	211
		<u>"C"</u>	
July 26, 27, 28, 29	1955	316,250	211
Aug. 1, 2, 3, 4, 5	1955	517,500	211
Aug. 8, 9, 10, 11	1955	288,995	211

The Riss rate applicable during the "A", "B" and "C" shipments was established in Riss Section 22 Quotation Nos. 414-53, AEF-1 and AEF-3-ECD via the following route:

- (1) Riss & Co.; Union Freightways.

The identical rate was established during the period of the "A", "B" and "C" shipments in Tri-States Warehousing and Distributing Co. Section 22 Quotation No. 1000-C, Supplement 4 via the following competing route:

- (2) Direct Tri-State Warehousing and Distributing Co. service.

The identical rate was also established during the period of the "C" shipments in Middlewest Motor Freight Bureau Section 22 Quotation No. 303-E via the following competing routes:

- (3) Campbell "66" Express to Kansas City, Mo.; Union Freightways.

- (4) Missouri-Arkansas Trans. Co.; Union Freightways.

This route was also established in Missouri-Arkansas Section 22 Quotation No. 13.

The identical rate was also established for the period of the "C" shipments after July 29, 1955, in Watson Bros. Section 22 Quotation No. 1000 over the following competing routes:

- (5) Missouri-Arkansas Trans. Co. to Kansas City, Mo.; Watson Bros. to Omaha, Neb.; West Nebraska Express.

- (6) Campbell "66" Express to Kansas City, Mo.; Watson Bros. to Omaha, Neb.; West Nebraska Express.
- (7) Campbell "66" Express to Kansas City, Mo.; Watson Bros. to Omaha, Neb.; Neylon Bros. Freight Lines.
- (8) Missouri-Arkansas Transportation Co. to Kansas City, Mo.; Watson Bros. to Omaha, Neb.; Neylon Bros. Freight Lines.

The following counterclaimants participated in routes which would have enabled them to perform the service, and offered to perform it during the period of the "A" shipments at a through rate of \$2.4265 per 100 pounds (AAR No. 14-A) and during the period of the "B" and "C" shipments at a through rate of \$2.11 per 100 pounds (WTL No. 915):

St. Louis-San Francisco
 Missouri-Kansas-Texas
 Chicago, Burlington & Quincy
 Union Pacific

Under the existing policies of the military establishment and the then applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

St. Louis-San Francisco	\$17,784.88
Missouri-Kansas-Texas	17,784.88
Chicago, Burlington & Quincy	36,108.69
Union Pacific	36,108.69

Kansas Ordnance Depot, Parsons, Kansas
 to
 Tooele Ordnance Depot, Tooele (Warner) Utah
 Shipments per Revised Schedule "B"

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
July 27, 28	1954	367,200	358
Aug. 2, 3, 4, 5	"	1,101,600	"

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Aug. 9, 10, 11, 12	1954	1, 132, 200	358
Aug. 16, 17, 18, 19, 20	"	1, 101, 600	"
Aug. 23	"	122, 400	"

"B"

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
June 22, 23, 24	1955	234, 384	358
June 27, 28	"	175, 017	"

The Riss rate for the "A" period was established in Riss Section 22 Quotation No. 700-54 via the following route:

- (1) Riss to Denver; Ashworth to Tooele.

The identical rate of other motor carriers for the "A" period was established in Rocky Mountain Motor Tariff Bureau Section 22 Quotation No. 43-C over the following competing routes:

- (2) Campbell 66 to Kansas City; Watson Bros. to Denver; Ashworth to Tooele.
- (3) Mo-Ark to Kansas City; Watson Bros. to Denver; Ashworth to Tooele.
- (4) Mo-Ark to Kansas City; Watson Bros. to Denver; Gallagher to Salt Lake City; Barton Truck to Tooele.
- (5) Mo-Ark to Kansas City; Watson Bros. to Denver; Boulder to Craig; Ringsby to Salt Lake City; Salt Lake Transfer to Tooele.
- (6) Mo-Ark to Kansas City; Watson Bros. to Denver; Boulder to Craig; Ringsby to Salt Lake City; Barton to Tooele.

The Riss rate for the "B" period was established in Riss Section 22 Quotation No. AEF-2-TC over the following competing routes:

- (1) Riss to Denver; Ashworth to Tooele.
- (2) Riss to Denver; P. L. E. to Tooele.

- (3) Riss to Denver; Rio Grande to Grand Junction;
Garrett to Reno; Wells Cargo to Tooele.

The identical rate for other motor carriers was established in Rocky Mountain Motor Tariff Bureau Section 22 Quotation No. 43-D over the following competing routes:

- (4) Campbell 66 to Kansas City; Watson Bros. to Denver;
Ashworth to Tooele.
- (5) Missouri-Arkansas to Kansas City; Watson Bros.
to Denver; Gallagher to Salt Lake City; Salt
Lake Transfer to Tooele.
- (6) Missouri-Arkansas to Kansas City; Watson Bros.
to Denver; Ashworth to Tooele.
- (7) Missouri-Arkansas to Kansas City; Watson Bros.
to Denver; Gallagher to Salt Lake City; Barton
Truck to Tooele.
- (8) Missouri-Arkansas to Kansas City; Watson to
Denver; Goldstein Refrigerator and Ringsby to
Salt Lake City; Barton Truck to Tooele.
- (9) Missouri-Arkansas to Kansas City; Watson to
Denver; Goldstein Refrigerator and Ringsby to
Salt Lake City; Salt Lake Transfer to Tooele.
- (10) Tri-State to Shiprock, N. M.; Ashworth to Tooele.

The following counterclaimants participated in routes which would have enabled them to perform this service and offered to perform such service at a through rate of \$4.1975 per cwt. during the "A" period (AAR Quotation No. 14-A), and \$3.58 per cwt. during the "B" period (WTL Quotation No. 1051):

Missouri-Kansas-Texas
St. Louis - San Francisco
Union Pacific

Under the existing policies of the military department and the applicable division agreements between rail carriers each would have received the following revenues from the traffic transported by Riss:

M-K-T	\$8,760.56
St. L-SF	23,653.48
U. P.	71,398.45

Kansas Ordnance Depot, Parsons, Kansas
to
Iowa Ordnance Depot, West Burlington, Iowa

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
May 25, 26	1954	148,058	163
June 2	"	147,345	"
July 2	"	139,431	"
July 9	"	144,111	"
Feb. 4	1955	50,048	"

- . The Riss rate was established in Riss Section 22 Quotation Nos. 527-54 and AEF-1 via the following route:

(1) Direct Riss service.

The identical rate was established in Watson Bros. Section 22 Quotation No. 1000 via the following competing route:

(2) Campbells "66" Express to Kansas City, Mo.;
Watson Bros.

The following counterclaimants participated in routes which would have enabled them to perform the service, and offered to perform such service at a through rate of \$1.63 per 100 pounds (WTL No. 728):

St. Louis-San Francisco
Missouri-Kansas-Texas
Chicago, Burlington & Quincy

Under the existing policies of the military establishment and the then applicable division agreements between rail carriers, each would have received

the following revenues from the traffic transported by Riss:

St. Louis-San Francisco	\$2,409.36
Missouri-Kansas-Texas	2,409.36
Chicago, Burlington & Quincy	5,433.87

Louisiana Ordnance, Doyline, Louisiana
to

Pueblo Ordnance, Avondale, Colorado

Shipments per Revised Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Sept. 13, 14, 15	1955	120,528	311

The Riss rate was established in Riss Section 22 Quotation No. 861-55 via the following route:

- (1) Fabacher Transportation Co. to Shreveport, La.;
- Red Ball Motor Freight, Inc. to Texarkana, Texas;
- Arkansas Motor Freight Lines to Kansas City, Mo.;
- Riss & Co.

The identical rate was also effective via all motor carriers including Riss & Co. party to Southwestern Motor Freight Bureau, Hughett Agent, Section 22 Quotation No. 1000-M.

The identical rate was also established in Watson Bros. Section 22 Quotation No. 1000 via the following competing routes:

- (2) D. C. Hall Transportation Co. to Dallas, Texas;
- Gillette Motor Transport, Inc. to Kansas City, Mo.;
- Watson Bros. to Pueblo, Colo.;
- Gottula Trucking & Transportation Co.
- (3) Herrin Transportation Co. to Dallas, Texas;
- Lee Way Motor Freight, Inc. to Kansas City, Mo.;
- Watson Bros. to Pueblo, Colo.;
- Gottula Trucking & Transportation Co.
- (4) Herrin Transportation Co. to Dallas, Texas;
- Luper Transportation Co. to Kansas City, Mo.;

Watson Bros. to Pueblo, Colo.; Gottula
Trucking & Transportation Co.

- (5) D. C. Hall Transportation Co. to Oklahoma
City, Okla.; Mid-Continent Freight Lines to
Kansas City, Mo.; Watson Bros. to Pueblo,
Colo.; Gottula Trucking & Transportation Co.
- (6) Herrin Transportation Co. to Dallas, Texas;
Gillette Motor Transport, Inc. to Kansas City,
Mo.; Watson Bros. to Pueblo, Colo.; Gottula
Trucking & Transportation Co.
- (7) Herrin Transportation Co. to El Dorado, Texas;
Arkansas Motor Freight Lines to Kansas City,
Mo.; Watson Bros. to Pueblo, Colo.; Gottula
Trucking & Transportation Co.
- (8) Herrin Transportation Co. to Memphis, Tenn.;
Hayes Freight Lines to St. Louis, Mo.; Watson
Bros. to Pueblo, Colo.; Gottula Trucking &
Transportation Co.

The following counterclaimants participated in routes which would have enabled them to perform the service, and offered to perform such service at a through rate of \$3.11 per 100 pounds (SWFB No. 1497):

Illinois Central

Santa Fe

Missouri Pacific

Under the existing policies of the military establishment and the then applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Illinois Central	\$402.96
Santa Fe	1,171.37
Missouri Pacific	1,452.52

Louisiana Ordnance, Doyline, Louisiana
to

Sierra Ordnance, Herlong, California

Shipments per Revised Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
July 25, 26, 27, 28	1955	858, 189	494

The Riss rate was established in Riss Section 22 Quotation No. 860-55 via the following routes:

- (1) Riss & Co. to Denver, Colo.; Pacific Intermountain Express to Reno, Nev.; Nevada-California Trans.
- (2) Riss & Co. to Denver, Colo.; Ashworth Transfer to Salt Lake City, Utah; Garrett Freightlines to Pendleton, Ore.; Pendleton-Portland Motor Trans.
- (3) Riss & Co. to Denver, Colo.; Boulder Truck Service to Craig, Colo.; Ringsby Truck Lines to Salt Lake City, Utah; Garrett Freightlines to Pendleton, Ore; Pendleton-Portland Motor Trans.
- (4) Riss & Co. to Denver, Colo.; Boulder Truck Service to Craig, Colo.; Ringsby Truck Lines to Salt Lake City, Utah; Northern Trans. to Reno, Nev.; Wells Cargo.
- (5) Riss & Co. to Denver, Colo.; Rio Grande Motor Way, Inc., to Grand Junction, Colo.; Garrett Frt. Lines, Inc.

The identical rate was established in Rocky Mountain Motor Tariff Bureau Section 22 Quotation No. 43-D via the following competing routes:

- (6) Fabacher Trans. Co. to Shreveport, La.; Red Ball Motor Frt. to Dallas, Tex.; Gillette Motor Transport to El Paso, Tex.; Western Truck Lines to Reno, Nev.; Nevada-California Trans. Co.

- (7) Fabacher Trans. Co. to Shreveport, La.; Strickland Trans. to Dallas, Tex.; Gillette Motor Transport to El Paso, Tex.; Western Truck Lines to Reno, Nev.; Nevada-California Trans. Co.
- (8) Fabacher Trans. Co. to Shreveport, La.; Red Ball Motor Frt. to Dallas, Tex.; Sunset Motor Lines to El Paso, Tex.; Western Truck Lines to Reno, Nev.; Nevada-California Trans. Co.
- (9) Fabacher Trans. Co. to Shreveport, La.; Strickland Trans. to Dallas, Tex.; Sunset Motor Lines to El Paso, Tex.; Western Truck Lines to Reno, Nev.; Nevada-California Trans. Co.
- (10) Herrin Trans. Co. to Houston, Tex.; Alamo Motor Lines to El Paso, Tex.; Western Truck Lines to Reno, Nev.; Nevada-California Trans.
- (11) Herrin Trans. Co. to Houston, Tex.; Alamo Motor Lines to El Paso, Tex.; Western Truck Lines to Reno, Nev.; Wells Cargo.
- (12) Herrin Trans. Co. to Dallas, Tex.; Merchants Fast Motor Lines to Lubbock, Tex.; T. I. M. E. to Azusa, Calif.; Constructors Transport.
- (13) Herrin Trans. Co. to Dallas, Tex.; Gillette Motor Transport to El Paso, Tex.; Western Truck Lines to Reno, Nev.; Wells Cargo.
- (14) Herrin Trans. Co. to Dallas, Tex.; Gillette Motor Transport to El Paso, Tex.; Western Truck Lines to Reno, Nev.; Nevada-California Trans. Co.
- (15) Herrin Trans. Co. to Dallas, Tex.; Merchants Fast Motor Lines to El Paso, Tex.; Alabam Frt. Lines to Phoenix, Ariz.; Consolidated Copperstate Lines to

Los Angeles, Calif.; Sacramento Frt. Lines.

- (16) Herrin Trans. Co. to Dallas, Tex.; Red Ball Motor Frt. to Amarillo, Tex.; Navajo Frt. Lines to Manteco, Calif.; Wells Cargo.
- (17) Herrin Trans. Co. to Dallas, Tex.; Sunset Motor Lines to El Paso, Tex.; Western Truck Lines to Reno, Nev.; Wells Cargo.
- (18) Herrin Trans. Co. to Houston, Tex.; Sunset Motor Lines to El Paso, Tex.; Western Truck Lines to Reno, Nev.; Wells Cargo.
- (19) Herrin Trans. Co. to Dallas, Tex.; Sunset Motor Lines to El Paso, Tex.; Western Truck Lines to Reno, Nev.; Nevada - California Trans. Co.
- (20) Herrin Trans. Co. to Houston, Tex.; Sunset Motor Lines to El Paso, Tex.; Western Truck Lines to Reno, Nev.; Nevada-California Trans. Co.
- (21) Herrin Trans. Co. to Shreveport, La.; Red Ball Motor Frt. to Amarillo, Tex.; Navajo Frt. Lines to Manteca, Calif.; Wells Cargo
- (22) Herrin Trans. Co. to Bethany, Tex.; Tri-State Warehousing & Distributing Co. to Shiprock, N. M.; Ashworth Transfer Co. to Reno, Nev.; Wells Cargo.
- (23) Herrin Trans. Co. to Dallas, Tex.; Merchants Fast Motor Lines to El Paso, Tex.; Western Truck Lines to Reno, Nev.; Nevada-California Trans. Co.
- (24) Herrin Trans. Co. to Dallas, Tex.; Sunset Motor Lines to Amarillo, Tex.; Navajo Frt. Lines to Manteca, Calif.; Wells Cargo.
- (25) Herrin Trans. Co. to Houston, Tex.; Southern-Plaza Express to El Paso, Tex.; Western Truck Lines to

- Reno, Nev.; Nevada-California Trans.
- (26) Herrin Trans. to Houston, Tex.; Southern-Plaza Express to El Paso, Tex.; Alabam Frt. Lines to Phoenix, Ariz.; Consolidated Copperstate Lines to Los Angeles, Calif.; Sacramento Frt. Lines.
- (27) D. C. Hall Transport, Inc. to Dallas, Tex.; Gillette Motors Transport to El Paso, Tex.; Western Truck Lines to Reno, Nev.; Nevada-California Trans. Co.
- (28) D. C. Hall Transport, Inc., to Dallas, Tex.; Strickland Trans. Inc., to Amarillo, Tex.; Navajo Frt. Lines to Manteca, Calif.; Wells Cargo.
- (29) D. C. Hall Transport, Inc. to Shreveport, La.; Red Ball Motor Frt. to Amarillo, Tex.; Navajo Frt. Lines to Manteca, Calif.; Wells Cargo.
- (30) D. C. Hall Transport, Inc., to Dallas, Tex.; Red Ball Motor Frt. to Amarillo, Tex.; Navajo Frt. Lines to Manteca, Calif.; Wells Cargo.
- (31) D. C. Hall Transport, Inc., to Dallas, Tex.; Sunset Motor Lines to Amarillo, Tex.; Navajo Frt. Lines to Manteca, Calif.; Wells Cargo.
- (32) D. C. Hall Transport Inc., to Oklahoma City, Okla.; T. I. M. E., Inc., to El Paso, Tex.; El Paso-Pecos Valley Truck Lines to White Sands, N. M.; T. I. M. E., Inc., to Azusa, Calif.; Constructors Transport.
- (33) D. C. Hall Transport Inc., to Dallas, Tex.; Strickland Trans., Inc., to Amarillo, Tex.; Denver-Amarillo Express to Denver, Colo.; Gallagher Frt. Lines to Salt Lake City, Utah; Northern Trans. Co. to Reno, Nev.; Nevada-California Trans. Co.
- (34) D. C. Hall Transport, Inc., to Dallas, Tex.;

Strickland Trans., Inc., to Amarillo, Tex.; Denver - Amarillo Express to Denver, Colo.; Gallagher Frt. Lines to Salt Lake City, Utah; Northern Trans. Co. to Reno, Nev.; Wells Cargo

- (35) D. C. Hall Transport to Dallas, Tex.; Strickland Trans. to Amarillo, Tex.; Denver-Amarillo Express to Denver, Colo.; Goldstein Trans. & Storage Co. - Ringsby Truck Lines-Northern Trans. to Reno, Nev.; Nevada-California Trans.
- (36) D. C. Hall Transport to Dallas, Tex.; Strickland Trans. to Amarillo, Tex.; Denver-Amarillo Express to Denver, Colo.; Goldstein Trans. & Storage Co. - Ringsby Truck Lines-Northern Trans. to Reno, Nev.; Wells Cargo.
- (37) D. C. Hall Transport to Dallas, Tex. or Shreveport, La.; Strickland Trans. to Amarillo, Tex.; Denver-Amarillo Express to Denver, Colo.; Boulder Truck Service-Garrett Frt. Lines to Reno, Nev.; Nevada-California Trans.
- (38) D. C. Hall Transport to Dallas, Tex. or Shreveport, La.; Strickland Trans. to Amarillo, Tex.; Denver-Amarillo Express to Denver, Colo.; Boulder Truck Service-Garrett Frt. Lines to Reno, Nev.; Wells Cargo.
- (39) D. C. Hall Transport to Oklahoma City, Okla.; T. I. M. E. to Azusa, Calif.; Sacramento Frt. Lines.
- (40) D. C. Hall Transport to Oklahoma City, Okla.; T. I. M. E. to Azusa, Calif.; Constructors Transport.
- (41) D. C. Hall Transport to Oklahoma City, Okla.; T. I. M. E. to El Paso, Tex.; Border Truck Line to

White Sands, N. M.; T. I. M. E. to Azusa, Calif.;
Sacramento Frt. Lines.

The following counterclaimants participated in routes which would have enabled them to perform the service, and offered to perform such service at a through rate of \$5.819 per 100 pounds (AAR No. 14-A):

Illinois Central
Southern Pacific

Under the existing policies of the military establishment and the then applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Illinois Central	\$9,613.07
Southern Pacific	8,776.60

Army Chemical Center, Edgewood, Maryland
to

Umatilla Ordnance, Oregon

Shipments per Revised Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
March 4, 5, 6, 7, 8	1957	296,815	666
March 11, 12, 13	1957	177,585	666

The Riss rate and the identical rate was established in Rocky Mountain Motor Tariff Bureau Section 22 Quotation No. 52 via the following competing routes:

- (1) Wooleyhan Transport to Baltimore, Md.; Riss & Co. to Denver, Colo.; Pacific Intermountain Express to Tremonton, Utah; Consolidated Freightways.
- (2) Wooleyhan Transport Co. to Gambrills, Md.; C. I. Whitten Transfer Co. to Seneca, Ill.; Roy Cartage Co. to Chicago, Ill.; Consolidated Freightways.

The following counterclaimants participated in routes which would have

enabled them to perform the service, and offered to perform such service at a through rate of \$6.99 per 100 pounds (WTA-76):

Pennsylvania Railroad

Union Pacific

Under the existing policies of the military establishment and the then applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Pennsylvania Railroad \$9,119.15

Union Pacific 20,062.14

Bay Shore Industries and Aerial Products, Elkton, Maryland
to

McAlester (N. A. D.) Haywood, Savanna, Oklahoma

Shipments per Revised Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
April 13,	1955	95,629	328
May 20,	1955	110,400	328
Aug. 31	1955	75,900	328
Sept. 16	1955	89,531	328
Sept. 23	1955	75,888	328
Oct. 14	1955	50,180	328
Dec. 21	1955	58,800	328

The Riss rate was established in Riss Section 22 Quotation Nos. 789-54 and AEF-3-ECD via the following route:

(1) Wooleyhan Transport to Baltimore, Md.; Riss & Co.

The identical rate was established in Hughes Transportation Co. Section 22 Quotation No. 204 via the following competing route:

(2) Hughes Transportation Co.; Hayes Frt. Lines;

Tri-State Warehousing and Distributing Co.

The following counterclaimants participated in routes which would have enabled them to perform the service, and offered to perform such service at a through rate of \$3.28 per 100 pounds (SWFB No. 1459):

Pennsylvania Railroad
Chicago, Rock Island & Pacific
Missouri-Kansas-Texas

Under the existing policies of the military establishment and the then applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Pennsylvania Railroad	\$11,313.49
Chicago, Rock Island & Pacific	3,467.04
Missouri-Kansas-Texas	3,467.03

Indian Head Junction (N. A. D.), Maryland
to

Sunflower Ordnance, De Soto, Kansas

Shipments per Revised Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
April 28, 29	1954	93,480	276
May 20, 21	1954	62,236	276
June 9, 10	1954	62,332	276
June 21, 22	1954	63,200	276
July 14, 15	1954	60,200	276
August 9, 10	1954	60,184	276
September 15, 16	1954	60,414	276
September 23, 24	1954	60,246	276
November 8, 9	1954	60,190	276
May 2	1955	60,340	276

The Riss rate was established pursuant to Riss Section 22 Quotation Nos. 494-54, 515-54, AEF-1, 789-54, and AEF-3-ECD via the following routes:

- (1) Bailey's Express to Baltimore, Md.; Riss & Co.
- (2) Wooleyhan Transport to Baltimore, Md.; Riss & Co. This route was effective December 20, 1954.

The identical rate was established in Watson Bros. Section

22 Quotation No. 921 via the following competing route:

- (3) Wooleyhan Transport to Alexandria, Va.; C. I. Whitten Transfer Co. to Cincinnati, Ohio; Hayes Frt. Lines to Peoria, Ill.; Watson Bros.

The identical rate was also established effective March 21, 1955, in Hughes Transportation Co. Section 22 Quotation No. 204 via the following competing route:

- (4) Hughes Transportation Co.; Hayes Frt. Lines; Tri-State Warehousing & Distributing Co.

The following counterclaimants participated in routes which would have enabled them to perform the service, and offered to perform such service at a through rate of \$3.0590 per 100 pounds (AAR No. 14-A):

Pennsylvania Railroad

Atchison, Topeka & Santa Fe

Under the existing policies of the military establishment and the then applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Pennsylvania Railroad \$10,815.16

Atchison, Topeka & Santa Fe 8,848.76

Indian Head NAD, Indian Head Junction, Maryland
to
Shumaker NAD, Arkansas

Shipments per Revised Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
July 6, 7, 8, 9	1954	356,460	302
July 13, 14	"	118,820	"
July 22, 23	"	150,135	"
Aug. 3, 4, 5, 6	"	327,044	"
Aug. 11, 12	"	178,230	"
Aug. 22, 23, 24, 25, 26	1955	386,165	"

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Aug. 29, 30, 31	1955	237, 640	302
Sept. 1, 2	"	148, 525	"
Sept. 6, 7	"	148, 525	"
Sept. 9	"	89, 083	"
Sept. 12	"	59, 410	"
Sept. 14	"	59, 410	"

The Riss rate was established in Riss Section 22 Quotation No. 516-54, AEF-1, 789-54 and AEF-3-E CD via the following routes:

- (1) Bailey's Express to Baltimore, Md.; Riss & Co.
to St. Louis, Mo.; Arkansas Motor Freight Lines, Inc.
- (2) Wooleyhan Transport Co. to Baltimore, Md.;
Riss & Co. to St. Louis, Mo.; Arkansas Motor
Freight Lines, Inc. This route became effective
March 1, 1955.

The identical rate was established in Super Service Motor Freight Co. Section 22 Quotation No. 71 via the following competing route:

- (3) Wooleyhan Transport Co. to Baltimore, Md.;
Super Service Motor Freight Co. to Nashville,
Tenn.; Cook Truck Lines to Memphis, Tenn.;
Southwestern Transportation Co.

The following counterclaimants participated in routes which would have enabled them to perform this service, and offered to perform such service at a through rate of \$3.02 per 100 pounds (SWFB Nos. 1199 and 1459):

Pennsylvania

Chicago, Rock Island & Pacific

Under the existing policies of the military establishment and the applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Pennsylvania	\$37, 324. 71
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Chicago, Rock Island & Pacific	18, 628. 24
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Naval Powder Factory, Indian Head, Maryland
to
Naval Ammunition Depot, Hawthorne (Thorne), Nevada
Shipments per Revised Schedule B

"A"

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
June 27, 28,	1955	337, 634	641
July 18, 19,	1955	359, 766	"
Aug. 25, 26,	1955	170, 811	"
Sept. 14, 15,	1955	341, 806	"
Sept. 20,	1955	181, 482	"

"B"

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
June 4, 5, 6,	1956	271, 478	673
June 7,	1956	151, 384	"
June 11, 12, 13, 14,	1956	389, 439	"
June 18,	1956	61, 984	"
June 20, 21,	1956	151, 235	"

The Riss rate for the "A" shipments shown above was established in Riss Section 22 Quotation No. AEF-2-TC* over the following competing routes:

- (1) Bailey's Express to Baltimore; Riss to
Denver; Ashworth to Hawthorne.
- (2) Woolleyhan Transport Co. to Baltimore;
Riss to Denver; Ashworth to Hawthorne.

The identical rate for the period was established in Rocky Mountain Motor

* Riss published the same rate in Rocky Mountain Motor Tariff Bureau Section 22 Quotation No. 43-D. That quotation, however, showed Riss as the originating carrier at Indian Head, a point which it had no authority to serve in that capacity under the Sub 60TA order effective after December, 1954.

Tariff Bureau Section 22 Quotation No. 43-D over the following competing routes:

- (3) Wooleyhan to Alexandria; C. I. Whitten Transfer Co. to Cincinnati; Hayes to Chicago; Watson Bros. to Denver; Ashworth to Hawthorne.
- (4) Wooleyhan to Alexandria; C. I. Whitten to Seneca, Ill.; Roy Cartage to Chicago; Watson Bros. to Denver; Ashworth to Hawthorne.
- (5) Wooleyhan to Alexandria; C. I. Whitten to Cincinnati; Hayes to Chicago; Watson to Denver; Gallagher to Salt Lake City; Northern Transportation Co. to Hawthorne.
- (6) Wooleyhan to Alexandria; C. I. Whitten to Seneca; Roy Cartage to Chicago; Watson Bros. to Denver; Gallagher to Salt Lake City; Northern to Hawthorne.
- (7) Wooleyhan to Alexandria; C. I. Whitten to Cincinnati; Hayes to Chicago; Watson Bros. to Denver; Goldstein Transportation & Storage, Ringsby and Northern to Hawthorne.
- (8) Wooleyhan to Alexandria; C. I. Whitten to Seneca; Roy Cartage to Chicago; Watson Bros. to Denver; Goldstein Transportation, Ringsby and Northern to Hawthorne.

The Riss rate for the "B" shipments shown above was established in Riss Section 22 Quotation No. AEF-4-TC and Uintah Section 22 Quotation No. 41 over the following competing routes:

- (1) Bailey's to Baltimore; Riss to Denver; Ashworth to Hawthorne.

- (2) Wooleyhan to Baltimore; Riss to Denver; Ashworth to Hawthorne.
- (3) Bailey's to Baltimore; Riss to Denver; Bee to Apache, Utah; Eastern Utah and Uintah to Salt Lake City; Inland to Reno; Wells Cargo to Hawthorne.
- (4) Wooleyhan to Baltimore; Riss to Denver; Bee to Apache; Eastern Utah and Uintah to Salt Lake City; Inland to Reno; Wells Cargo to Hawthorne.
- (5) Bailey's to Baltimore; Riss to Denver; PIE to Reno; Wells Cargo to Hawthorne.
- (6) Wooleyhan to Baltimore; Riss to Denver; PIE to Reno; Wells Cargo to Hawthorne.
- (7) Bailey's to Baltimore; Riss to Denver; PIE to Reno; PMT to Hawthorne.
- (8) Wooleyhan to Baltimore; Riss to Denver; PIE to Reno; PMT to Hawthorne.

The identical rate for this period was established in Rocky Mountain Motor Bureau Section 22 Quotation No. 52 over the following competing routes:

- (9) Wooleyhan to Gambrills, Md.; C.I. Whitten to Cincinnati; Hayes to Chicago; Watson Bros. to Denver; Gallagher to Salt Lake City; Northern to Hawthorne.
- (10) Wooleyhan to Gambrills, Md.; C.I. Whitten to Cincinnati; Hayes to Chicago; Watson Bros. to Denver; Goldstein Transportation, Ringsby, and Northern to Hawthorne.

The following counterclaimants participated in routes during both the "A" and "B" periods which would have enabled them to perform this service, and offered to perform such service during the "A" period at a

rate of \$7.498 per cwt. (AAR Quotation No. 14-A) and during the "B" period at a rate of \$6.73 per cwt. (WTA Quotation No. 76):

Pennsylvania Railroad

Southern Pacific

Under the existing policies of the military establishment and the then applicable division agreements between rail carriers each would have received the following revenues from the traffic transported by Riss:

P. R. R. \$48,368.45

S. P. 62,271.46

Lake City Ordnance, Lake City, Missouri
to

Kingsbury Ordnance, Kingsbury (Dillon), Indiana

Shipments per Revised Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Dec. 6, 7, 8, 9, 10	1954	221,019	174
Feb. 3, 4, 5, 6	1955	104,433	174
Feb. 8	1955	52,640	174

The Riss rate was established in Riss Section 22 Quotation No. AEF-1 via the following route:

- (1) Direct Riss service.

The identical rate was also established in Watson Bros. Section 22 Quotation No. 1000 via the following competing route:

- (2) Intercity Freight Lines to Kansas City, Mo.;
Watson Bros. to Chicago or Peoria, Ill.; Hayes
Freight Lines.

The identical rate was also established effective December 10, 1954 via:

- (3) All motor carriers party to Middlewest Motor
Freight Bureau Section 22 Quotation No. 303-E.

The following counterclaimants participated in routes which would have

enabled them to perform the service, and offered to perform such service at a through rate of \$1.863 per 100 pounds (AAR No. 14-A):

Missouri Pacific

Wabash

Under the existing policies of the military establishment and the then applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Missouri Pacific \$3,381.05

Wabash 1,831.40

Lake City Ordnance, Lake City, Missouri
to
Savanna Ordnance, Proving Ground, Illinois

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
May 10, 11, 12	1954	366,000	163

The Riss rate was established in Riss Section 22 Quotation No. 529-54 via the following route:

(1) Direct Riss service.

The identical rate was established in Watson Bros. Section 22 Quotation No. 1000 via the following competing route:

(2) Intercity Freight Lines to Kansas City, Mo.;
Watson Bros.

The following counterclaimants participated in routes which would have enabled them to perform the service, and offered to perform such service at a through rate of \$1.679 per 100 pounds (AAR 14-A):

Missouri Pacific

Chicago, Burlington & Quincy

Under the existing policies of the military establishment and the then applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Missouri Pacific \$3,256.92

Chicago, Burlington & Quincy 2,888.22

Cornhusker Ordnance, Coplant, Nebraska
to
Letterkenny Ordnance, Culbertson, Pennsylvania

Shipments per Revised Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
June 16, 17	1955	222, 207	296
June 20, 21	1955	221, 697	296

The Riss rate was established in Riss Section 22 Quotation No. AEF-3-ECD via the following route:

(1) Union Freightways to Kansas City, Mo.; Riss & Co.

The identical rate was established in C. L. Whitten Transfer Co. Section 22 Quotation No. 109 via the following competing route:

(2) Union Freightways; Roy Cartage Co.; C. L.

Whitten Transfer Co.

The following counterclaimants participated in routes which would have enabled them to perform the service, and offered to perform such service at a through rate of \$3.5075 per 100 pounds (AAR No. 14-A):

Chicago, Burlington & Quincy

Union Pacific

Under the existing policies of the military establishment and the then applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Chicago, Burlington & Quincy	\$4, 048. 18
Union Pacific	1, 860. 60

Nebraska Ordnance, Firestone, Mead and Wahoo, Nebraska
to
Crane NAD, Indiana

Shipments per Revised Schedule B

"A"

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Aug. 9, 10, 11, 12, 13	1954	384, 192	210
Sept. 16, 17	"	237, 568	"

<u>Date</u>	<u>Quantity</u>	<u>Rate</u>
Sept. 20, 21, 22, 23, 24 1954	475, 136	210

"B"

<u>Date</u>	<u>Quantity</u>	<u>Rate</u>
Oct. 11, 12, 13 1954	308, 560	200

The Riss rate for the period during the "A" shipments was established in Riss Section 22 Quotation No. 664-54 via the following route:

- (1) Neylon Bros. Freight Lines to Omaha, Nebraska;
Riss & Co.

The identical rate for the period during the "A" shipments was established in Watson Bros. Section 22 Quotation No. 1000 via the following competing routes:

- (2) Watson Bros. to Peoria, Illinois or St. Louis, Mo.;
Hayes Freight Lines.
- (3) Watson Bros. to Chicago or Peoria, Illinois or
St. Louis, Mo.; Hayes Freight Lines. This route
was effective September 7, 1954.

The Riss rate for the period during the "B" shipments was established in Riss Section 22 Quotation No. AEF-3-ECD via the following competing routes:

- (4) Tri-State Warehousing & Distributing Co.;
Riss & Co.
- (5) Route (1) above was established October 13, 1955
in Riss Section 22 Quotation No. 851-55 which
quoted the identical rate.

The identical rate for the period during the "B" shipments was established in Watson Bros. Section 22 Quotation No. 1000 via route (3) above.

The following counterclaimants participated in routes which would have enabled them to perform this service, and offered to perform such service at a through rate of \$2.1735 per 100 pounds (AAR No. 14-A):

Chicago, Burlington & Quincy

Union Pacific

Chicago, Milwaukee, St. Paul & Pacific

Under the existing policies of the military establishment and the applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Chicago, Burlington & Quincy	\$11,455.35
Union Pacific	4,001.74
Chicago, Milwaukee, St. Paul & Pacific	15,090.50

Nebraska Ordnance, Firestone, Mead and Wahoo, Nebraska
to

McAlester (N. A. D.) Haywood and Savanna, Oklahoma

Shipments per Revised Schedule B

"A"

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
January 26	1955	59,392	207
January 28	1955	148,480	207
February 2, 3	1955	118,784	207
February 7	1955	89,088	207

"B"

February 10, 11, 12	1955	237,568	207
February 14, 15, 16	1955	237,568	207
March 3	1955	59,392	207

The Riss rate applicable during the period of the "A" and "B" shipments was established in Riss Section 22 Quotation No. 820-55 via the following route:

(1) Neylon Bros. Freight Lines to Omaha, Neb.; Riss
& Co.

The identical rate was established in Watson Bros. Section 22 Quotation No. 1000 via the following competing routes:

- (2) Watson Bros. Transportation Co. to Kansas City,
Mo.; Lee Way Motor Freight to Tulsa, Okla.;
American Transfer & Storage.
- (3) Watson Bros. Transportation Co. to Kansas City,
Mo.; Mid Continent Freight Lines.
- (4) Watson Bros. Transportation Co. to Kansas City, Mo.;
Mid Continent Frt. Lines.
- (5) Watson Bros. Transportation Co. to Kansas City,
Mo.; Gillette Motor Transport.
The identical rate was also established via
- (6) All motor carriers party to Middlewest Motor Freight
Bureau Section 22 Quotation No. 303-E.

The following counterclaimants participated in routes which would have enabled them to perform the service, and offered to perform such service at a through rate during the period of the "A" shipments of \$2.2195 per 100 pounds (AAR No. 14-A) and during the period of the "B" shipments a rate of \$2.07 per 100 pounds (SWFB No. 1577):

Chicago, Burlington & Quincy
Union Pacific
Chicago, Rock Island & Pacific
Missouri-Kansas-Texas

Under the existing policies of the military establishment and the then applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Chicago, Burlington & Quincy	\$4,109.17
Union Pacific	4,109.17
Chicago, Rock Island & Pacific	5,986.18
Missouri-Kansas-Texas	6,087.65

Nebraska Ordnance, Firestone, Mead and Wahoo, Nebraska
to

Tooele Desert Ordnance, Warner, Utah

Shipments per Revised Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
October 18, 19	1955	215,880	332

The Riss rate was established in Riss Section 22 Quotation No. 850-55 via the following route:

- (1) Neylon Bros. Frt. Line to Omaha, Neb.; Riss & Co. to Denver, Colo.; Ashworth Transfer

The identical rate was established in Rocky Mountain Motor Tariff Bureau Section 22 Quotation No. 43-D via the following competing routes:

- (2) Neylon Bros. Frt. Lines to Lincoln Neb.;
Interstate Motor Lines to Salt Lake City, Utah;
Barton Truck Line.
- (3) Neylon Bros. Frt. Lines to Lincoln, Neb.;
Interstate Motor Lines to Salt Lake City, Utah;
Salt Lake Transfer Co.
- (4) Neylon Bros. Frt. Lines to Omaha, Neb.; Buckingham Trans. Inc. to Cheyenne, Wyo.; Pacific Intermountain Express.
- (5) Watson Bros. Trans. to Denver, Colo.; Ashworth Transfer.
- (6) Watson Bros. Trans. to Denver, Colo.; Goldstein Trans. & Storage Co. -Ringsby Truck Lines to Salt Lake City, Utah; Barton, Truck Line.
- (7) Watson Bros. Trans. to Denver, Colo.; Goldstein Trans. & Storage Co. -Ringsby Truck Lines to Salt Lake City, Utah; Salt Lake Transfer Co.

- (8) Watson Bros. Trans. to Denver, Colo.; Gallagher Frt. Lines to Salt Lake City, Utah; Barton Truck Line.
- (9) Watson Bros. Trans. to Denver, Colo.; Gallagher Frt. Lines to Salt Lake City, Utah; Salt Lake Transfer Co.

The following counterclaimants participated in routes which would have enabled them to perform the service, and offered to perform such service at a through rate of \$3.32 per 100 pounds (WTL No. 1116):

Chicago, Burlington & Quincy
Union Pacific

Under the existing policies of the military establishment and the then applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Chicago, Burlington & Quincy	\$1,243.51
Union Pacific	3,583.61

Hastings (N. A. D.) Nebraska
to

Crane (N. A. D.) Indiana

Shipments per Revised Schedule B

<u>Date</u>	<u>Quantity</u>	<u>Rate</u>
August 24, 1954	116,518	240
August 27, 1954	86,420	240

The Riss rate was established pursuant to Riss Section 22 Quotation No. 542-54 via the following route:

- (1) Union Freightways to Kansas City, Mo.; Riss & Co.

The identical rate was established in Watson Bros. Section 22 Quotation No. 1000 via the following competing route:

- (2) Watson Bros. to Chicago or Peoria, Ill., or
St. Louis, Mo.; Hayes Frt. Lines.

The following counterclaimants participated in routes which would have enabled them to perform the service, and offered to perform such service at a through rate of \$2.461 per 100 pounds (AAR No. 14-A):

Chicago, Burlington & Quincy
Missouri Pacific
Union Pacific
Chicago, Milwaukee, St. Paul and Pacific

Under the existing policies of the military establishment and the then applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Chicago, Burlington & Quincy	\$1,298.52
Missouri Pacific	519.40
Union Pacific	351.27
Chicago, Milwaukee, St. Paul and Pacific	2,825.11

Hastings (N. A. D.), Nebraska
to
Letterkenny Ordnance, Culbertson, Pennsylvania

Shipments per Revised Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Feb. 23, 24, 25, 26, 27, 28	1955	970,200	296
Mar. 1, 2, 3, 4, 5	1955	840,840	296
Mar. 7, 8, 9, 10, 11 12, 13, 14, 15, 16 17, 18, 19, 20	1955	2,037,310	296
Mar. 25, 26	1955	161,700	296
Mar. 28, 29, 30	1955	256,410	296
Oct. 6, 7	1955	89,790	296
Oct. 12, 13, 14	1955	150,060	296

The Riss rate was established pursuant to Riss Section 22 Quotations Nos. AEF-1 and AEF-3-ECD via the following route:

(1) Union Freightways to Kansas City, Mo.; Riss & Co.

The identical rate was established in Watson Bros. Section 22 Quotation No. 924 via the following competing route:

(2) Watson Bros. Transportation Co. to Chicago, Ill., or Peoria, Ill.; Hayes Frt. Lines to Cincinnati, Ohio; C. I. Whitten Transfer Co.

The identical rate was also established effective March 10, 1955, in C. I. Whitten Transfer Co. Section 22 Quotation No. 109 via the following competing route:

(3) Union Freightways, Roy Cartage Co., C. I. Whitten Transfer Co.

The following counterclaimants participated in routes which would have enabled them to perform the service, and offered to perform such service at a through rate of \$3.381 per 100 pounds (AAR No. 14-A):

Chicago, Burlington & Quincy
Missouri Pacific
Union Pacific

Under the existing policies of the military establishment and the then applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Chicago, Burlington & Quincy	\$26,408.79
Missouri Pacific	22,853.75
Union Pacific	12,137.88

Hastings (N. A. D.), Nebraska
to
Earle (N. A. D.), New Jersey
Shipments per Revised Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
August 18	1954	116,942	320
Sept. 8	1954	53,000	320

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Dec. 1, 2	1954	162, 432	320
Dec. 8	1954	62, 040	320
March 26, 27	1955	131, 193	320
April 16	1955	79, 900	320
Aug. 12	1955	120, 320	320

The Riss rate was established pursuant to Riss Section 22 Quotation Nos. 542-54, 795-54, AEF-1, and AEF-3-ECD via the following route:

- (1) Union Freightways to Kansas City, Mo.; Riss & Company.

The identical rate was established in Watson Bros. Section 22 Quotation No. 973 via the following competing route:

- (2) Watson Bros. Transportation Co., Inc., Hayes Frt. Lines, C.I. Whitten Transfer; Smith & Solomon Trucking Co.

The following counterclaimants participated in routes which would have enabled them to perform the service, and offered to perform such service at a through rate during the period of the August and September, 1954, movements of \$3.4845 per 100 pounds (AAR No. 14-A), and during the period of the December, 1954, to August, 1955, movements a through rate of \$3.20 per 100 pounds (WTL 854):

Chicago, Burlington & Quincy
Missouri Pacific
Union Pacific
Pennsylvania Railroad

Under the existing policies of the military establishment and the then applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Chicago, Burlington & Quincy	\$3, 240, 36
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Missouri Pacific	\$3,240.36
Union Pacific	1,944.22
Pennsylvania Railroad	7,576.72

Sioux Ordinance, Sidney, Nebraska
to
Indiana Arsenal, Charlestown or Watson, Indiana

Shipments per Revised Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
July 18	1955	58,694	303
July 28, 29	"	109,980	"
Aug. 1, 2	"	110,704	"
Aug. 19	"	55,352	"
Aug. 21, 22, 23	"	166,056	"

The Riss rate was established in Riss Section 22 Quotation No. AEF-3-ECD via the following route;

- (1) Union Freightways to Omaha, Nebraska;
Riss & Co. to Jeffersonville, Indiana;
Adkins Transfer Co.

The identical rate was established in Watson Bros. Section 22 Quotation No. 1000 via the following competing routes:

- (2) West Nebraska Express to Omaha, Nebraska;
Watson Bros. to Peoria, Illinois or St. Louis,
Missouri; Hayes Freight Lines to Louisville,
Kentucky; Falls Cities Transfer & Storage Co.
- (3) Neylon Bros. Freight Lines to Omaha, Nebraska;
Watson Bros. to Peoria, Illinois or St. Louis,
Missouri; Hayes Freight Lines to Louisville,
Kentucky; Falls Cities Transfer & Storage Co.

The identical rate was also established via all motor carriers party to Middlewest Motor Freight Bureau Section 22 Quotation No. 303-E.

The following counterclaimants participated in routes which would have enabled them to perform this service, and offered to perform such service at a through rate of \$3.03 per 100 pounds (WTL No. 854):

Chicago, Burlington & Quincy
Union Pacific
Pennsylvania

Under the existing policies of the military establishment and the applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Chicago, Burlington & Quincy	\$5,690.18
Union Pacific	3,763.15
Pennsylvania	1,972.60

Sioux Ordinance, Sidney, Nebraska
to

Crane (N. A. D.) Indiana

Shipments per Revised Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Aug. 12, 13	1954	142,320	304
Aug. 16, 17, 18	1954	167,760	304
Aug. 20, 21, 22, 23	1954	430,680	304

The Riss rate was established pursuant to Riss Section 22 Quotation No. 536-54 via the following route:

- (1) Union Freightways to Kansas City, Mo.; Riss & Co.

The identical rate was established in Watson Bros. Section 22 Quotation No. 1000 via the following competing route:

- (2) Neylon Bros. Frt. Lines to Omaha, Neb.;
Watson Bros. to Peoria, Ill.; Hayes Frt. Lines.

The following counterclaimants participated in routes which would have enabled them to perform the service, and offered to perform such service

at a through rate of \$3.2545 per 100 pounds (WTA No. 76):

Chicago, Burlington & Quincy

Union Pacific

Chicago, Milwaukee, St. Paul and Pacific

Under the existing policies of the military establishment and the then applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Chicago, Burlington & Quincy	\$9,884.30
Union Pacific	6,147.55
Chicago, Milwaukee, St. Paul and Pacific	8,076.18

Sioux Ordinance, Sidney, Nebraska
to
Sunflower Ordinance, De Soto, Kansas

Shipments per Revised Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
July 25, 26, 27, 28, 29, 30	1955	241,080	183
Aug. 1, 2, 3	1955	162,288	183
February 14	1956	61,028	183
February 19, 20	1956	90,568	183

The Riss rate was established pursuant to Riss Section 22 Quotation No. AEF-3-ECD via the following route:

- (1) Union Freightways to Kansas City, Mo. or
Omaha, Neb.; Riss & Co.

The identical rate was established in Watson Bros. Section 22 Quotation No. 1000 via the following competing route:

- (2) Watson Bros. to Omaha, Neb.; Union Freightways.
- (3) Watson Bros. to Omaha, Neb.; West Nebraska
Express.

The identical rate was also established via

- (4) All motor carriers party to Middlewest Motor

Freight Bureau Tariff Section 22 Quotation No.

303-E.

The following counterclaimants participated in routes which would have enabled them to perform the service, and offered to perform such service at a through rate during the period of the July and August, 1955, shipments of \$2.2655 per 100 pounds (AAR No. 14-A) and during the period of the February, 1956, shipments of \$1.92 per 100 pounds (WTA No. 76):

Chicago, Burlington & Quincy

Union Pacific

Atchison, Topeka & Santa Fe

Under the existing policies of the military establishment and the then applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Chicago, Burlington & Quincy \$4,940.07

Union Pacific 4,518.35

Atchison, Topeka & Santa Fe 2,590.52

Sioux Ordinance, Sidney, Nebraska
to

McAlester NAD, Haywood or Savanna, Oklahoma
Shipments per Revised Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Aug. 18, 19, 20	1954	230,400	258
Aug. 23, 24	"	57,600	"
Aug. 26	"	57,600	"
Aug. 28, 29, 30	"	116,400	"
Sept. 1, 2	"	60,960	"
Sept. 7	"	91,440	"
Sept. 10	"	60,960	"
Sept. 13	"	91,440	"
Sept. 22, 23, 24, 25	"	212,160	"
Sept. 29	"	60,000	"

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Oct. 6, 7	1954	60, 000	258
Oct. 15, 16	"	59, 760	"
Oct. 18, 19	"	89, 520	"
Oct. 22	"	119, 760	"
Oct. 27, 28, 29	"	149, 520	"
Nov. 4, 5	"	60, 000	"
Nov. 8	"	89, 760	"
Nov. 12, 13, 14	"	119, 280	"

The Riss rate was established in Riss Section 22 Quotation Nos. 477-54 and AEF-1 via the following route:

- (1) Riss & Co. to Omaha, Nebraska; Union Freightways.

The identical rate was established in Watson Bros. Section 22 Quotation No. 1000 via the following competing routes:

- (2) West Nebraska Express to Omaha, Nebraska; Watson Bros. to Kansas City, Mo.; Lee Way Motor Freight, Inc. to Tulsa, Okla.; American Transfer & Storage Co.
- (3) West Nebraska Express to Omaha, Nebraska; Watson Bros. to Kansas City, Mo.; Luper Transportation Co.
- (4) West Nebraska Express to Omaha, Nebraska; Watson Bros. to Kansas City, Mo.; Gillette Motor Freight, Inc.
- (5) West Nebraska Express to Omaha, Nebraska; Watson Bros. to Kansas City, Mo.; Mid-Continent Freight Lines.

The identical rate was also established in Luper Transportation Co. Section 22 Quotation No. 161 via the following competing route:

(6) Union Freightways; Luper Transportation Co.

The identical rate was also established in Union Freightways Section 22 Quotation No. 172 via the following competing route:

(7) Union Freightways to Kansas City, Mo.;

Gillette Motor Transport

The identical rate was also established in Union Freightways Section 22 Quotation No. 181 via the following competing route:

(8) Union Freightways to Kansas City, Mo.;

Yellow Transit Freight Lines

The following counterclaimants participated in routes which would have enabled them to perform this service, and offered to perform such service at a through rate of \$2.58 per 100 pounds (SWFB No. 1358, Amend. No. 1):

Chicago, Burlington & Quincy

Union Pacific

Chicago, Rock Island & Pacific

Missouri-Kansas-Texas

Under the existing policies of the military establishment and the applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Chicago, Burlington & Quincy	\$12,790.87
Union Pacific	12,790.87
Chicago, Rock Island & Pacific	10,140.52
Missouri-Kansas-Texas	10,370.98

Hawthorne Naval Ammunition Depot, Thorne, Nevada
to

Indiana Arsenal, Charlestown or Watson, Indiana

Shipments per Revised Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Aug. 16, 17, 18, 19, 20	1954	151,662	557
Aug. 23, 24, 25, 26, 27	"	149,569	"
Aug. 30, 31	"	59,892	"

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Sept. 2	1954	59,970	557
Sept. 7, 8, 9, 10	"	118,174	"
Sept. 13, 14, 15, 16, 17	"	150,696	"
Sept. 20, 21, 22, 23	"	128,800	"
Sept. 27, 28, 29, 30	"	128,800	"
Oct. 4, 5, 6	"	92,736	"
Oct. 8	"	61,824	"
Oct. 11	"	61,824	"
Oct. 13, 14	"	61,824	"
Oct. 15	"	61,824	"
Oct. 20, 21, 22	"	216,384	"
Oct. 25, 26	"	92,736	"
Nov. 30	"	61,824	"
Dec. 1, 2, 3	"	92,844	"
Dec. 6, 7, 8, 9	"	155,100	"
Dec. 13, 14, 15, 16	"	122,745	"

The Riss rate was established in Riss Section 22 Quotation Nos. 585-54 and AEF-1 via the following route:

- (1) Ashworth Transfer to Denver, Colorado;
Riss & Co.

The identical rate was established in Rocky Mountain Motor Tariff Bureau Section 22 Quotation No. 43-C via the following competing route:

- (2) Ashworth Transfer to Denver, Colorado;
Watson Bros. to Chicago, Illinois; Hayes
Freight Lines to Louisville, Ky.; Adkins
Transfer Co.
- (3) Northern Trans. Co., Ringsby Truck Lines,
Boulder Truck Service to Denver, Colo.;
Watson Bros. to Chicago, Ill.; Hayes Freight

- Lines to Louisville, Ky.; Adkins Transfer Co.
- (4) Northern Trans. Co., Ringsby Truck Line,
Goldstein Refrigerator Line to Denver, Colo.;
Watson Bros. to Chicago, Ill.; Hayes Freight
Lines to Louisville, Ky.; Adkins Transfer Co.
This route was effective December 13, 1954.
- (5) Northern Trans. Co. to Salt Lake City, Utah;
Gallagher Transfer & Storage to Denver, Colo.;
Watson Bros. to Chicago, Ill.; Hayes Freight
Lines to Louisville, Ky.; Adkins Transfer Co.
- (6) Ashworth Transfer to Denver, Colo.; Watson
Bros. to Chicago, Ill.; Hayes Freight Lines
to Louisville, Ky.; Fall Cities Transfer &
Storage Co.
- (7) Northern Trans. Co. to Salt Lake City, Utah;
Gallagher Transfer & Storage to Denver, Colo.;
Watson Bros. to Chicago, Ill.; Hayes Freight
Lines to Louisville, Ky.; Fall Cities Transfer
& Storage Co.
- (8) Northern Trans. Co., Ringsby Truck Lines,
Boulder Truck Service to Denver, Colo.; Watson
Bros. to Chicago, Ill.; Hayes Freight Lines to
Louisville, Ky.; Fall Cities Transfer & Storage Co.
- (9) Northern Trans. Co., Ringsby Truck Lines, Boulder
Truck Service to Denver, Colo.; Watson Bros. to
Chicago, Ill.; Hayes Freight Lines to Louisville,
Ky.; Fall Cities Transfer & Storage Co.
- (10) Northern Trans. Co. to Los Angeles, Calif.;
Navajo Freight Lines to Amarillo, Texas;
Lee Way Motor Freight to Oklahoma City, Okla.;

Mid-Continent Freight Lines.

(11) Northern Trans. Co. to Los Angeles, Calif.;

Western Truck Lines to El Paso, Texas;

Gillette Motor Transport to Oklahoma City,

Okla.; Mid-Continent Freight Lines.

The following counterclaimants participated in routes which would have enabled them to perform the service, and offered to perform such service at a through rate of \$6.555 per 100 pounds (AAR No. 14-A):

Southern Pacific

Pennsylvania Railroad

Under the existing policies of the military establishment and the then applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Southern Pacific \$55,180.60

Pennsylvania Railroad 8,266.82

Hawthorne (N. A. D.), Thorne, Nevada
to

Crane (N. A. D.), Indiana

Shipments per Revised Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
January 10, 11, 12	1955	86,400	557
February 9	1955	60,795	557

The Riss rate was established pursuant to Riss Section 22 Quotation Nos. 698-54 AEF-1 and in Rocky Mountain Motor Tariff Bureau Section 22 Quotation No. 43-C via the following route:

(1) Ashworth Transfer Co. to Denver, Colo.; Riss & Co.

The identical rate was established in Rocky Mountain Motor Tariff Bureau Quotation No. 43-C via the following competing routes:

(2) Ashworth Transfer Co. to Denver, Colo.; Watson

Bros. Trans. Co. to Chicago, Ill.; Hayes Frt. Lines.

- (3) Northern Trans. Co. to Salt Lake City, Utah
Gallagher Transfer & Storage Co. to Denver, Colo.;
Watson Bros. Trans. Co. to Chicago, Ill.; Hayes
Frt. Lines.
- (4) Northern Trans. to Los Angeles, Calif.; Western
Truck Lines to El Paso, Tex.; Gillette Motor
Transport to Oklahoma City, Okla.; Mid Continent
Frt. Lines.
- (5) Northern Trans-Ringsby Truck Lines-Boulder Truck
Service to Denver, Colo.; Watson Bros. Trans. to
Chicago, Ill.; Hayes Frt. Lines.
This route was effective only until January 12, 1955.
- (6) Northern Trans-Ringsby Truck Lines-Goldstein Trans.
& Storage Co. to Denver, Colo.; Watson Bros. Trans.
to Chicago, Ill.; Hayes Frt. Lines to South Bend,
Ind.; Clemans Truck Lines.

The following counterclaimants participated in routes which would have enabled them to perform the service, and offered to perform such service at a through rate of \$6.555 per 100 pounds (AAR No. 14-A):

Southern Pacific

Chicago, Milwaukee, St. Paul and Pacific

Under the existing policies of the military establishment and the then applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Southern Pacific	\$4,002.66
Chicago, Milwaukee, St. Paul and Pacific	2,527.77

Hawthorne NAD, Thorne, Nevada
to
Earle, New Jersey

Shipments per Revised Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
March 29, 30, 31	1955	255, 640	641

The Riss rate shown above was established pursuant to Riss Section 22 Quotation No. 806-54 via the following route:

- (1) Ashworth Transfer to Denver, Colo.;
Riss & Co.

The identical rate was established in Rocky Mountain Motor Tariff Bureau Section 22 Quotation No. 43-D via the following competing route:

- (2) Northern Trans. Co., Ringsby Truck Lines,
Goldstein Trans. & Storage Co. to Denver, Colo.;
Watson Bros. Trans. to Peoria, Ill. or St. Louis,
Mo.; Hayes Freight Lines to Cincinnati, Ohio;
C. I. Whitten Transfer Co. to Kenvil, N. J.;
Smith & Solomon Trucking Co.

The following counterclaimants participated in routes which would have enabled them to perform this service, and offered to perform such service at a through rate of \$7.498 per 100 pounds (AAR Quotation No. 14-A):

Southern Pacific

Pennsylvania Railroad

Under the existing policies of the military establishment and the applicable division agreements between railroads, each would have received the following revenues from the traffic transported by Riss:

Southern Pacific	\$6, 670. 37
Pennsylvania Railroad	2, 903. 18

Hawthorne NAD, Thorne, Nevada
to
Naval Powder Factory, Indian Head Junction, Maryland
Shipments per Revised Schedule B

"A"

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
June 15, 16, 17,	1955	328, 659	641
June 20, 21, 22, 23, 24 ,	1955	337, 582	"
June 27, 28, 29, 30,	1955	244, 340	"
July 1,	1955	90, 842	"
July 5, 6, 7, 8.	1955	276, 034	"
July 11,	1955	73, 886	"

"B"

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
December 8.	1955	60, 193	635
December 13, 14, 15.	1955	208, 958	"

The Riss rate for the "A" shipments shown above was established pursuant to Riss Section 22 Quotations Nos. 805-54 and AEF-2-TC, over the following competing routes:

- (1) Ashworth Transfer, Inc. to Denver; Riss to Baltimore; Bailey's Express to Indian Head.
- (2) Ashworth Transfer, Inc. to Denver; Riss to Baltimore; Wooleyhan Transport Co. to Indian Head.

The same rate was established in Rocky Mountain Motor Tariff Bureau Section 22 Quotation No. 43-D over the following additional competitive routes:

- (3) Ashworth Transfer, Inc. to Denver; Watson Bros. Transportation Co., Inc. to Chicago; Hayes Freight Lines, Inc. to Cincinnati; C. I. Whitten Transfer Co. to Alexandria;

Wooleyhan Transportation Co. to Indian Head.

- (4) Ashworth to Denver; Watson Bros. to Chicago;
Roy Cartage Co. to Seneca, Illinois, C. L. Whitten
to Alexandria; Wooleyhan to Indian Head.
- (5) Northern Transportation Co. to Salt Lake City;
Gallagher Freight Lines, Inc. to Denver;
Watson Bros. to Chicago; Hayes to Cincinnati;
C. L. Whitten to Alexandria; Wooleyhan to Indian Head.
- (6) Northern to Salt Lake City; Gallagher to Denver;
Watson Bros. to Chicago; Roy Cartage to Seneca;
C. L. Whitten to Alexandria; Wooleyhan to Indian
Head.
- (7) Northern, Ringsby Truck Lines, Inc. and Goldstein
Transportation & Storage, Inc. to Denver; Watson
Bros. to Chicago; Hayes to Cincinnati; C. L. Whitten
to Alexandria; Wooleyhan to Indian Head.
- (8) Northern, Ringsby, and Goldstein to Denver; Watson
Bros. to Chicago; Roy Cartage to Seneca; C. L.
Whitten to Alexandria; Wooleyhan to Indian Head.

The Riss rate for the "B" shipments shown above was established pursuant to Riss Section 22 Quotation No. AEF-4-TC and Uintah Section 22 Quotation No. 41 over the following competitive routes:

- (9) Ashworth Transfer, Inc. to Denver; Riss to
Baltimore; Bailey's Express to Indian Head.
- (10) Ashworth Transfer, Inc. to Denver; Riss to
Baltimore; Wooleyhan to Indian Head.
- (11) Wells Cargo to Reno; Inland to Salt Lake City;
Eastern Utah and Uintah to Apache, Utah; Bee
Freight Line to Denver; Riss to Baltimore; Bailey's
Express to Indian Head.

- (12) Wells Cargo to Reno; Inland to Salt Lake City; Eastern Utah and Uintah to Apache, Utah; Bee Freight Line to Denver; Riss to Baltimore; Wooleyhan to Indian Head.
- (13) Wells Cargo to Reno; PIE to Denver; Riss to Baltimore; Bailey's Express to Indian Head.
- (14) Wells Cargo to Reno; PIE to Denver; Riss to Baltimore; Wooleyhan to Indian Head.

This identical rate for the "B" shipments was established in Watson Bros. Section 22 Quotation No. 1091-A via the following competing routes:

- (15) Ringsby Truck Lines, Inc. to Salt Lake City, Utah; Gallagher Freight Lines, Inc. to Denver, Colo.; Watson Bros. Transportation Co., Inc. to Chicago, Ill.; Hayes Freight Lines, Inc. to Cincinnati, Ohio or Jeffersonville, Ind.; C. I. Whitten Transfer Co. to Gambrilla, Md.; Wooleyhan Transport Co. to Indian Head.
- (16) Ringsby Truck Lines, Inc., Goldstein Transportation & Storage, Inc. to Denver, Colo.; Watson Bros. Trans. Co., Inc. to Chicago, Ill.; Hayes Freight Lines, Inc. to Cincinnati, Ohio or Jeffersonville, Ind.; C. I. Whitten Transfer Co. to Gambrilla, Md.; Wooleyhan Transport Co. to Indian Head.
- (17) Ashworth Transfer to Chicago, Ill. or Denver, Colo.; Hayes Freight Lines to Cincinnati, Ohio; C. I. Whitten Transfer to Gambrilla, Md.; Wooleyhan Transport Co. to Indian Head.

The following counterclaimants participated in routes that would

have enabled them to perform the service, and did offer to perform such service at a through rate of \$7.498 per 100 pounds as to the "A" shipments (AAR Quotation 14-A) and \$6.35 as to the "B" shipments (WTA Quotation 76):

Southern Pacific

Pennsylvania Railroad

Under the policies of the military establishment and the applicable division agreements between rail carriers, each would have received the following revenue from the traffic transported by Riss:

Southern Pacific \$42,682.12

Pennsylvania Railroad 28,584.81

Picatinny Arsenal, Dover, New Jersey
to

Pueblo Ordnance, Avondale, Colorado

Shipments per Revised Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Oct. 25, 26, 27	1955	156,419	384
Jan. 5, 6	1956	60,006	384
Jan. 10	1956	60,006	384

The Riss rate was established pursuant to Riss Section 22 Quotation Nos. AEF-3-ECD and AEF-5-ECD via the following routes:

- (1) New York & New Brunswick Auto Express to
Trenton, N. J.; Riss & Co.
- (2) Wooleyhan Transport to Baltimore, Md.; Riss
& Co.

The identical rate was established in Watson Bros. Section 22 Quotation Nos. 950 and 100 via the following competing route:

- (3) C. L. Whitten Transfer Co. to Cincinnati, Ohio;
Hayes Frt. Lines to Chicago or Peoria, Ill.;
Watson Bros. Transportation Co. to Pueblo, Colo.;
Gottula Trucking & Transportation Co.

The following counterclaimants participated in routes which would have enabled them to perform the service, and offered to perform such service at a through rate of \$3.84 per 100 pounds (WTL No. 854, Supp. 9):

Atchison, Topeka & Santa Fe

Missouri Pacific

Under the existing policies of the military establishment and the then applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Atchison, Topeka & Santa Fe	\$3,078.34
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Missouri Pacific	2,584.61
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Picatinny Arsenal, Dover, New Jersey
to

Hawthorne NAD, Thorne, Nevada

Shipments per Revised Schedule B

"A"

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Sept. 19, 20, 21	1955	199,227	695

"B"

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Dec. 1, 2	1955	120,840	635
Dec. 5	1955	91,107	635

The Riss rate for the period of the "A" shipments was established in Riss Section 22 Quotation No. AEF-2-TC and Uintah Freight Lines Section 22 Quotation No. 41 via the following competing routes:

- (1) New York & New Brunswick Auto Express to
Trenton, N. J.; Riss & Co. to Denver, Colo.;
Ashworth Transfer.
- (2) New York & New Brunswick Auto Express to
Trenton, N. J.; Riss & Co. to Denver, Colo.;
Bee Freight Lines, Eastern Utah Trans.,

Uintah Freight Lines to Reno, Nevada;

Wells Cargo, Inc.

(3) Wooleyhan Transport Co. to Baltimore, Md.;
Riss & Co. to Denver, Colo.; Ashworth
Transfer Co.

(4) Wooleyhan Transport Co. to Baltimore, Md.;
Riss & Co. to Denver, Colo.; Bee Freight
Lines to Apache, Utah; Eastern Utah Trans.;
Uintah Freight Lines to Salt Lake City, Utah;

1-2 Inland Freight Lines to Reno, Nevada; Wells
Cargo, Inc.

The identical rate for the period of the "A" shipment was established in
Rocky Mountain Tariff Bureau Section 22 Quotation No. 43-D via the
following competing routes:

(5) C. L. Whitten Transfer Co. to Cincinnati, Ohio;
Hayes Freight Lines to Chicago, Ill.; Watson
Bros. to Denver, Colo.; Ashworth Transfer.

(6) C. L. Whitten to Seneca, Ill.; Roy Cartage to
Chicago, Ill.; Watson Bros. to Denver, Colo.;
Ashworth Transfer.

(7) C. L. Whitten to Cincinnati, Ohio; Hayes Freight
Lines to Chicago, Ill.; Watson Bros. to Denver,
Colo.; Gallagher Freight Lines to Salt Lake
City, Utah; Northern Trans. Co.

(8) C. L. Whitten to Seneca, Ill.; Roy Cartage to
Chicago, Ill.; Watson Bros. to Denver, Colo.;
Gallagher Freight Lines to Salt Lake City, Utah;
Northern Trans. Co.

(9) C. L. Whitten to Cincinnati, Ohio; Hayes Freight
Lines to Chicago, Ill.; Watson Bros. to Denver,

Colo.; Goldstein Trans. & Storage, Ringsby
Truck Lines.

- (10) C. L. Whitten to Seneca, Ill.; Roy Cartage to
Chicago, Ill.; Watson Bros. to Denver, Colo.;
Goldstein Trans. & Storage-Ringsby Truck Lines.

The Riss rate for the period of the "B" shipments was established in Riss
Section 22 Quotation No. 934-55 and Uintah Freight Lines Section 22 Quo-
tation No. 41 via the following competing routes:

- (11) New York & New Brunswick Auto Express to
Trenton, N. J.; Riss & Co. to Denver, Colo.;
Bee Freight Lines, Eastern Utah Trans., Uintah
Freight Lines, Inland Freight Lines to Reno,
Nevada; Wells Cargo.
- (12) Wooleyhan Transport Co. to Baltimore, Md.;
Riss & Co. to Denver, Colo.; Bee Freight Lines
to Apache, Utah; Eastern Utah Trans., Uintah
Freight Lines to Salt Lake City, Utah; Inland
Freight Lines to Reno, Nevada; Wells Cargo, Inc.

The identical rate for the period of the "B" shipments was established in
Watson Bros. Section 22 Quotation No. 1091-A via the following competing
routes:

- (13) C. L. Whitten Transfer Co. to Cincinnati, Ohio;
Hayes Freight Lines to Chicago, Ill.; Watson
Bros. Trans. to Denver, Colo.; Ashworth Transfer.
- (14) C. L. Whitten Transfer Co. to Cincinnati, Ohio;
Hayes Freight Lines to Chicago, Ill.; Watson
Bros. Trans. Co. to Denver, Colo.; Goldstein
Trans. & Storage, Ringsby Truck Lines.
- (15) C. L. Whitten Transfer Co. to Cincinnati, Ohio;
Hayes Freight Lines to Chicago, Ill.; Watson

Bros. Trans. Co. to Denver, Colo.; Gallagher Freight Lines to Salt Lake City, Utah; Ringsby Truck Lines.

The following counterclaimants participated in routes which would have enabled them to perform the service, and offered to perform such service at a through rate during the "A" period of \$7.498 per 100 pounds (AAR 14-A) and during the "B" period at a through rate of \$6.35 per 100 pounds (WTA No. 76):

Southern Pacific

Under the existing policies of the military establishment and the then applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Southern Pacific \$10,204.73

Wingate Ordnance, Wingate, New Mexico
to

Kansas Ordnance, Parsons, Kansas

Shipments per Revised Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Oct. 11, 12	1956	240,000	247
Oct. 15, 16, 17, 18	1956	387,926	247

The Riss rate was established pursuant to Riss Section 22 Quotation No. AEF-2-TC via the following route:

(1) Navajo Frt. Lines to Denver, Colo.; Riss & Co.

The identical rate was established in Rocky Mountain Motor Tariff Bureau Section 22 Quotation No. 52 via the following competing route:

(2) Navajo Frt. Lines to Amarillo, Tex.; Lee Way Motor Freight to Tulsa, Okla.; American Transfer & Storage Co.

The following counterclaimants participated in routes which would have enabled them to perform the service, and offered to perform such service at a through rate of \$3.96 per 100 pounds (WTA 76):

Atchison, Topeka & Santa Fe

Missouri-Kansas-Texas

St. Louis-San Francisco

Under the existing policies of the military establishment and the then applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Atchison, Topeka & Santa Fe	\$22,503.61
Missouri-Kansas-Texas	1,181.13
St. Louis-San Francisco	1,181.13

Ravenna Arsenal, Atlas, Ohio
to
Sunflower Ordnance Depot, De Soto, Kansas

Shipments per Revised Schedule B

<u>Date</u>	<u>Quantity</u>	<u>Rate</u>
August 1, 1955	65,462	235

The Riss rate was established in Riss Section 22 Quotation Nos. AEF-1 and AEF-3-ECD via the following route:

- (1) Direct Riss & Co. service

The identical rate was established in Watson Bros. Section 22 Quotation No. 1000 via the following competing route:

- (2) Direct Trans. Co. to Akron, Ohio; Hayes Frt.
Lines to Chicago, Ill.; Watson Bros.

The identical rate was also established via:

- (3) All motor carriers party to Middlewest Motor
Freight Bureau Section 22 Quotation No. 303-E.

The following counterclaimants participated in routes which would have enabled them to perform the service, and offered to perform such service at a through rate of \$2.507 per 100 pounds (AAR No. 14-A):

Atchison, Topeka & Santa Fe

Pennsylvania Railroad

Under the existing policies of the military establishment and the then applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Atchison, Topeka & Santa Fe	\$968.27
Pennsylvania Railroad	672.86

Ravenna Arsenal, Atlas, Ohio
to
Sierra Ordnance Depot, Herlong, California

Shipments per Revised Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Sept. 13, 14, 15, 16	1955	845,853	658
Sept. 19	1955	60,595	658

The Riss rate was established pursuant to Riss Section 22 Quotation No. AEF-2-TC via the following routes:

- (1) M. & M. Trucking Co. to Akron, Ohio; Riss & Co. to Denver, Colo.; Bee Frt. Lines, Eastern Utah Trans. Co., Uintah Frt. Lines, Inland Frt. Lines to Reno, Nev.; Wells Cargo.
- (2) M. & M. Trucking Co. to Akron, Ohio; Riss & Co. to Denver, Colo.; Pacific Intermountain Express to Reno, Nev.; Wells Cargo.
- (3) M. & M. Trucking Co. to Akron Ohio; Riss & Co. to Denver, Colo.; Ashworth Transfer Co. to Reno, Nev.; Wells Cargo.
- (4) M. & M. Trucking Co. to Akron, Ohio; Riss & Co. to Denver, Colo.; Rio Grande Motor Way, Inc., to Grand Jct., Colo.; Garrett Freightlines to Reno, Nev.; Wells Cargo.

The identical rate was established in Rocky Mountain Motor Tariff Bureau Section 22 Quotation No. 43-D via the following competing routes:

- (5) Direct Transportation Co., Hayes Frt. Lines, Consolidated Freightways, Wells Cargo.
- (6) Fletcher Frt. Lines, Decatur Cartage Co., Consolidated Freightways, Wells Cargo.
- (7) Direct Transportation Co. to Akron, Ohio; Hayes Frt. Lines to Chicago, Ill.; Watson Bros. Trans. to Denver, Colo.; Ashworth Transfer Co. to Reno, Nev.; Nevada-California Trans. Co.
- (8) Direct Trans. Co. to Akron, Ohio; Hayes Frt. Lines to Chicago, Ill.; Watson Bros. Trans. to Denver, Colo.; Ashworth Transfer to Reno, Nev.; Wells Cargo.
- (9) Direct Trans. Co. to Akron, Ohio; Hayes Frt. Lines to Chicago, Ill.; Watson Bros. Trans. to Denver, Colo.; Gallagher Frt. Lines to Salt Lake City, Utah; Northern Trans. Co. to Reno, Nev.; Nevada-California Trans. Co.
- (10) Direct Trans. Co. to Akron, Ohio; Hayes Frt. Lines to Chicago, Ill.; Watson Bros. Trans. to Denver, Colo.; Gallagher Frt. Lines to Salt Lake City, Utah; Northern Trans. Co. to Reno, Nev.; Wells Cargo.
- (11) Direct Trans. Co. to Akron, Ohio; Hayes Frt. Lines to Chicago, Ill.; Watson Bros. Trans. to Denver, Colo.; Goldstein Trans. & Storage Co., Ringsby Truck Lines, Northern Trans. Co. to Reno, Nev.; Nevada-California Trans. Co.
- (12) Direct Trans. Co. to Akron, Ohio; Hayes Frt. Lines to Chicago, Ill.; Watson Bros. Trans. to Denver, Colo.; Goldstein Trans. & Storage Co., Ringsby Truck Lines, Northern Trans. Co. to Reno, Nev.; Wells Cargo.

(13) Mid Continent Freight Lines, Inc., to Oklahoma City, Okla.; T.I. M. E., Inc., to Azusa, Calif.; Sacramento Freight Lines, Inc.

(14) Mid Continent Frt. Lines to Oklahoma City, Okla.; T.I. M. E. to El Paso, Tex.; Border Truck Line to White Sands, N. M.; T.I. M. E. to Azusa, Calif.; Sacramento Frt. Lines.

The following counterclaimants participated in routes which would have enabled them to perform the service, and offered to perform such service at a through rate of \$7.084 per 100 pounds (AAR 14-A):

Pennsylvania Railroad

Southern Pacific

Under the existing policies of the military establishment and the then applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Pennsylvania Railroad	\$4,280.85
Southern Pacific	12,072.00

Ravenna Ordnance, Atlas, Ohio
to
Black Hills Ordnance, Provo, South Dakota

Shipments per Revised Schedule B

		<u>"A"</u>	
<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Sept. 2, 3, 4	1955	446,320	370
Sept. 6, 7, 8, 9, 10, 11, 12	"	1,339,278	"
		<u>"B"</u>	
<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Nov. 30	1955	181,716	332
Dec. 2	"	505,298	"

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Jan. 12, 13	1956	336, 490	332
Jan. 16, 17, 18, 19, 20	"	1, 166, 390	"
Jan. 23, 24, 25, 26	"	969, 640	"
Jan. 30	"	302, 860	"

The Riss rate applicable during the period of the "A" and "B" shipments was established in Riss Section 22 Quotation Nos. AEF-3-ECD and AEF-5-ECD via the following route:

- (1) M&M Trucking Co. to Akron, Ohio; Riss & Co.
to Omaha, Neb.; Buckingham Transportation Co.

The identical rate applicable during the period of the "A" and "B" shipments was established in Watson Bros. Section 22 Quotation No. 1000 via the following competing route:

- (2) Direct Transportation Co. to Akron, Ohio;
Hayes Freight Lines to Chicago, Ill.; Watson
Bros. to Omaha, Neb.; Buckingham Transportation Co.

The following counterclaimants participated in routes which would have enabled them to perform the service, and offered to perform it during the period of the "A" shipments at a through rate of \$3.75 per 100 pounds (WTL Nos. 753 and 754) and during the period of the "B" shipments at a through rate of \$3.32 per 100 pounds (WTA No. 76) with the exception of the November 30, 1955, shipments, the through rate being \$3.3235 per 100 pounds (WTA No. 76):

Pennsylvania Railroad
Chicago, Burlington & Quincy

Under the existing policies of the military establishment and the then applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Pennsylvania Railroad	\$16,978.99
Chicago, Burlington & Quincy	130,980.80

Ravenna Ordnance, Atlas, Ohio
to
Sioux Ordnance, Sidney, Nebraska
Shipments per Revised Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Jan. 4, 5, 6	1956	1,040,060	317
Jan. 9, 10, 11, 12	"	827,540	"

The Riss rate was established in Riss Section 22 Quotation No. AEF-5-ECD via the following route:

- (1) M&M Trucking Co. to Akron, Ohio; Riss & Co. to Omaha, Neb.; Union Freightways.

The identical rate was established in Watson Bros. Section 22 Quotation No. 1000 via the following competing routes:

- (2) Direct Transportation Co. to Akron, Ohio;
Hayes Freight Lines to Chicago or Peoria, Ill.;
Watson Bros. to Omaha, Neb.; Neylon Bros. Freight Lines.
- (3) Direct Transportation Co. to Akron, Ohio;
Hayes Freight Lines to Chicago or Peoria, Ill.;
Watson Bros. to Omaha, Neb., West Nebraska Express.

The following counterclaimants participated in routes which would have enabled them to perform the service, and offered to perform such service at a through rate of \$3.17 per 100 pounds (WTA No. 76):

Pennsylvania Railroad
Chicago, Burlington & Quincy
Union Pacific

Under the existing policies of the military establishment and the then

applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Pennsylvania Railroad	\$5,722.95
Chicago, Burlington & Quincy	21,017.04
Union Pacific	11,988.59

Ravenna Ordnance, Atlas, Ohio
to
Tooele, Utah

Shipments per Revised Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
June 6, 7, 8, 9, 10,	1955	1,590,604	541
June 13, 14, 15, 16, 17	1955	1,848,638	"
June 20, 21, 22, 23, 24	1955	1,878,924	"
June 27	1955	375,974	"
July 5, 6, 7, 8	1955	878,769	"
July 11, 12, 13, 14, 15	1955	941,221	"
July 18, 19, 20	1955	456,381	"

The Riss rate was established in Riss Section 22 Quotations Nos. 889-55 and AEF-2-TC and in Uintah Section 22 Quotation Nos. 40 and 41 over the following competing routes:

- (1) M&M Trucking Co. to Akron; Riss to Denver;
Ashworth to Tooele.
- (2) M&M Trucking Co. to Akron, Riss to Denver;
Bee Freight to Apache, Utah; Eastern Utah and
Uintah to Salt Lake City; Barton to Tooele.
- (3) M&M Trucking to Akron; Riss to Denver; Bee
Freight to Apache, Utah; Eastern Utah and Uintah
to Salt Lake City; Salt Lake Transfer to Tooele
(eff. July 15, 1955).

The identical rate for other motor carriers was established in Rocky

Mountain Motor Tariff Bureau Section 22 Quotation No. 43-D over the following competing routes:

- (4) Direct Transportation to Akron; Hayes to Chicago; Watson to Denver; Ashworth to Tooele.
- (5) Direct Transportation to Akron; Hayes to Chicago; Watson to Denver; Gallagher and Barton to Tooele.
- (6) Direct Transportation to Akron; Hayes to Chicago; Watson to Denver; Gallagher to Salt Lake; Salt Lake Transfer to Tooele.
- (7) Direct Transportation to Akron; Hayes to Chicago; Watson to Denver; Goldstein Transfer and Ringsby to Salt Lake City; Barton to Tooele.
- (8) Direct Transportation to Akron; Hayes to Chicago; Watson to Denver; Goldstein Transfer and Ringsby to Salt Lake City; Salt Lake Transfer to Tooele.
- (9) C. I. Whitten to Seneca; Roy Cartage to Chicago; Watson to Denver; Ashworth to Tooele (eff. June 28, 1955).

The following counterclaimants participated in routes which would have enabled them to perform such service and offered to perform this service at a through rate of \$5.6235 per cwt. (AAR Quotation 14-A):

Pennsylvania Railroad

Union Pacific

Under the existing policies of the military and the applicable division agreements between railroads, these counterclaimants would have received the following revenues from the traffic transported by Riss:

Pennsylvania Railroad	\$40,339.95
Union Pacific	135,587.06

Kilgore Manufacturing Co., Westerville, Ohio
to

Hastings (N. A. D.), Nebraska

Shipments per Revised Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Apr. 28, 29	1954	663, 936	257
May 14	1954	187, 200	257
May 20	1954	187, 200	257

The Riss rate was the rate shown on Revised Schedule "B". A later quotation, Riss Section 22 Quotation No. 779.54 effective November 30, 1954, quoted the same rate via the following route:

(1) Riss & Co. to Omaha, Nebraska; Union Freightways.

The identical rate was established in Watson Bros. Section 22 Quotation No. 937 via the following competing route:

(2) Hayes Freight Lines to Welco, Ill.; Watson Bros.

The following counterclaimants participated in routes which would have enabled them to perform the service, and offered to perform such service at a through rate of \$2.8175 per 100 pounds (AAR No. 14-A):

Pennsylvania Railroad
Chicago, Burlington & Quincy
Missouri Pacific
Union Pacific

Under the existing policies of the military establishment and the then applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Pennsylvania Railroad	\$11,994.60
Chicago, Burlington & Quincy	5,753.51
Missouri Pacific	5,753.51
Union Pacific	2,993.77

McAlester NAD, Haywood or Savanna, Oklahoma
to

Pueblo Ordnance, Avondale, Colorado

Shipments per Revised Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Oct. 21	1955	86,740	209
Oct. 24	"	85,760	"

The Riss rate was established in Riss Section 22 Quotation No. AEF-3-ECD via the following route:

- (1) Direct Riss service.

The identical rate was established in Watson Bros. Section 22 Quotation No. 1000 via the following competing routes:

- (2) Luper Transportation Co. to Kansas City, Mo.;
Watson Bros. to Pueblo, Colo.; Gottula Trucking
and Transportation Co.
- (3) Mid-Continent Freight Lines to Kansas City, Mo.;
Watson Bros. to Pueblo, Colo.; Gottula Trucking
and Transportation Co.
- (4) Gillette Motor Transport, Inc. to Kansas City, Mo.;
Watson Bros. to Pueblo, Colo.; Gottula Trucking
and Transportation Co.

The identical rate was also established via all motor carriers, including Riss & Co., party to Southwestern Motor Freight Bureau - Hughett Agent, Section 22 Quotation No. 1000-N.

The following counterclaimants participated in routes which would have enabled them to perform the service, and offered to perform such service at a through rate of \$2.09 per 100 pounds (SWFB No. 1641, Amend. No. 1):

Chicago, Rock Island & Pacific

Missouri-Kansas-Texas

Santa Fe

Missouri Pacific

Under the existing policies of the military establishment and the then applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Chicago, Rock Island & Pacific	\$ 811.18
Missouri-Kansas-Texas	775.13
Santa Fe	991.45
Missouri Pacific	1,027.49

McAlester (N. A. D.) Haywood and Savanna, Okla.
to

Indiana Arsenal, Charlestown and Watson, Indiana

Shipments per Revised Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Jan. 11, 12, 13, 14	1955	330,640	220
Jan. 17, 18, 19, 20, 21	1955	273,820	220
Jan. 24, 25, 26, 27, 28	1955	305,140	220

The Riss rate was established pursuant to Riss Section 22 Quotation No. AEF-1 via:

(1) Direct Riss service.

The identical rate was established in Mid Continent Freight Lines Section 22 Quotation No. 266-54 via:

(2) Direct Mid Continent Freight Lines Service.

The identical rate was also established in Powell Bros. Truck Lines Section 22 Quotation No. 172-54A via the following competing route:

(3) American Transfer & Storage Co.; Powell Bros.

Truck Lines; Hayes Freight Lines; Falls Cities

Transfer and Storage Co.

The following counterclaimants participated in routes which would have enabled them to perform the service, and offered to perform such service at a through rate of \$2.20 per 100 pounds (SWFB No. 1459):

Chicago, Rock Island & Pacific

Missouri-Kansas-Texas

Pennsylvania Railroad

Under the existing policies of the military establishment and the then applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Chicago, Rock Island & Pacific	\$6,643.72
Missouri-Kansas-Texas	5,803.24
Pennsylvania Railroad	3,782.12

Naval Ammunition Depot, McAlester, Oklahoma
to

Port Chicago, California

Shipments per Revised Schedule B

"A"

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
March 18, 19	1954	357,280	396
March 22, 23	"	343,780	"
August 11	"	59,660	"
August 17	"	80,260	"
August 19	"	79,560	"

"B"

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
March 19, 20, 21, 22, 23	1956	410,960	396
March 26, 27, 28	"	181,680	"

"C"

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
June 13, 14, 15	1956	317,040	420
Dec. 1	"	116,960	"
Dec. 17	"	74,320	"

The Riss rate for the "A" shipments shown above was established in Riss Section 22 Quotation No. 321-53 over the following route:

- (1) Riss to Denver; Ashworth to Reno; Wells Cargo to Port Chicago.

The identical rate for other motor carriers for the period was established in Rocky Mountain Motor Tariff Bureau Section 22 Quotation No. 43-C over the following competing routes:

- (2) American Transfer to Tulsa, Oklahoma; Lee Way to Amarillo, Texas; Navajo to Manteca, California; Wells Cargo to Port Chicago.
- (3) H. A. Day to Oklahoma City; Lee Way to Amarillo; Navajo to Manteca, California; Wells Cargo to Port Chicago.
- (4) Elliott to Oklahoma City; Southern Express to El Paso; Alabam to Tucson; Consolidated Copperstate to Los Angeles; Sacramento Freight to Sacramento; Doyle Draying to Port Chicago.
- (5) Gillette to El Paso; Western to Oakland or San Francisco; Doyle Draying to Port Chicago.
- (6) Luper to Oklahoma City; Lee Way to Amarillo; Navajo to Manteca, California; Wells Cargo to Port Chicago.
- (7) Yellow Transit to Amarillo; Navajo to Manteca, California; Wells Cargo to Port Chicago.
- (8) Yellow Transit to Amarillo; Navajo to Manteca, California; Constructors Transport to Port Chicago.

The Riss rate for the "B" and "C" period was established in Riss Section 22 Quotation No. AEF-2-TC over the following competing routes:

- (1) Riss to Denver; P. L. E. to Port Chicago.
- (2) Riss to Denver; Bee to Apache, Utah; Eastern Utah and Uintah to Salt Lake City; Inland Freight Lines to Port Chicago.

- (3) Riss to Denver; Ashworth to Salt Lake City; Garrett to Pendleton, Oregon; Sites to Port Chicago.
- (4) Riss to Denver; Rio Grande to Grand Junction; Garrett to Sacramento; Sacramento Freight to Port Chicago.

The rate for other motor carriers for these periods was established in Rocky Mountain Motor Tariff Bureau Section 22 Quotation No. 43-D over the following competing routes:

- (5) American Transfer to Tulsa; Lee Way to Amarillo; Navajo to Manteca, California; Wells Cargo to Port Chicago.
- (6) H. A. Day to Oklahoma City; Lee Way to Amarillo; Navajo to Manteca, California; Wells Cargo to Port Chicago.
- (7) H. A. Day to Oklahoma City; T. I. M. E. to El Paso; Border to White Sands, New Mexico; T. I. M. E. to Azusa, California; Sacramento Freight to Port Chicago.
- (8) H. A. Day to Oklahoma City; T. I. M. E. to El Paso; Border to White Sands; T. I. M. E. to Azusa; Constructors to Port Chicago.
- (9) H. A. Day to Oklahoma City; T. I. M. E. to El Paso; El Paso-Pecos Valley to White Sands; T. I. M. E. to Azusa; Constructors to Port Chicago.
- (10) H. A. Day to Oklahoma City; T. I. M. E. to El Paso; El Paso-Pecos Valley to White Sands; T. I. M. E. to Azusa; Sacramento Freight to Port Chicago.

- (11) H. A. Day to Oklahoma City; T. L. M. E. to Azusa; Constructors to Port Chicago.
- (12) H. A. Day to Oklahoma City; T. L. M. E. to Azusa; Sacramento Freight to Port Chicago.
- (13) Gillette to El Paso; Western to Oakland or San Francisco; Doyle Draying to Port Chicago.
- (14) Mid-Continent to Oklahoma City; Lee Way to Amarillo; Navajo to Manteca; Wells Cargo to Port Chicago.
- (15) Mid-Continent to Kansas City; Watson Bros. to Denver; Gallagher to Salt Lake City; Inland to Port Chicago.
- (16) Mid-Continent to Oklahoma City; T. L. M. E. to Azusa; Constructors to Port Chicago.
- (17) Yellow Transit to Amarillo; Navajo to Manteca; Wells Cargo to Port Chicago.

During the "C" period, routes (7), (8), and (15) were cancelled from 43-D, effective May 17, 1956, and the following route was added on the same date:

- (18) Mid-Continent to Kansas City; Watson Bros. to Denver; Gallagher to Salt Lake City; Ringsby to Port Chicago.

On October 4, 1956, the following route was added in 43-D:

- (19) Gillette to El Paso; Western to Oakland or San Francisco; Delta to Port Chicago.

On December 13, 1956, the following additional routes were added to 43-D:

- (20) Pioneer Freight to Oklahoma City; T. L. M. E. to Azusa; Constructors to Port Chicago.
- (21) Pioneer Freight to Oklahoma City; T. L. M. E. to Azusa; Sacramento Freight to Port Chicago.

The change in the motor carrier rate shown between the "B" and "C" periods above became effective in both Riss AEF-2-TC and R. M. M. T. B. 43-D on April 18, 1956.

The following counterclaimants participated in routes which would have enabled them to perform this service and offered to perform it at a through rate of \$5.3705 per 100 pounds (AAR Quotation 14-A) during the "A" period, a through rate of \$3.96 per 100 pounds (TCFB Quotation No. 68-B) during the "B" period, and a through rate of \$4.20 per 100 pounds (TCFB Quotation No. 68-C) during the "C" period:

Chicago, Rock Island & Pacific
Missouri-Kansas-Texas
Atchison, Topeka & Santa Fe
Southern Pacific

Under the existing policies of the military establishment and the then applicable division agreements between rail carriers, each would have received the following revenue from traffic transported by Riss:

Chicago, Rock Island & Pacific	\$16,730.38
Missouri-Kansas-Texas	9,260.60
Atchison, Topeka & Santa Fe	33,696.37
Southern Pacific	28,441.62

McAlester NAD, Haywood or Savanna, Oklahoma
to

Black Hills Ordnance, Provo, South Dakota

Shipments per Revised Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Oct. 2	1954	58,940	300
Oct. 13	"	87,860	"
Oct. 20	"	88,940	"
Oct. 22	"	118,700	"
Nov. 2	"	117,540	"
Nov. 8, 9, 10	"	294,800	"

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Nov. 15, 16, 17, 18, 19	1954	471, 420	300
Nov. 23, 24	"	235, 200	"
Nov. 30	"	59, 060	"
Dec. 1, 2, 3	"	353, 580	"
Dec. 14, 15	"	147, 600	"

The rate for Riss is shown on Revised Schedule B as being the rate applicable to the above shipments.

The identical rate was established in Watson Bros. Section 22 Quotation No. 1000 via the following competing routes:

- (1) American Transfer & Storage Co. to Tulsa, Okla.; Lee Way Motor Freight to Kansas City, Mo.; Watson Bros. to Omaha, Neb.; Buckingham Transportation Inc.
- (2) Luper Trans. Co. of Okla. -Luper Trans. Lines to Tulsa, Okla.; Lee Way Motor Freight to Kansas City, Mo.; Watson Bros. to Omaha, Neb.; Buckingham Transportation Inc.
- (3) Mid-Continent Freight Lines to Kansas City, Mo.; Watson Bros. to Omaha, Neb.; Buckingham Transportation Inc.
- (4) Gillette Motor Transport Inc. to Kansas City, Mo.; Watson Bros. to Omaha, Neb.; Buckingham Transportation Inc.

The identical rate was also established in Middlewest Motor Freight Bureau Section 22 Quotation No. 303-D via route (2) above. This route was in effect until December 9, 1954. On December 10, 1954 the identical rate was established via all motor carriers party to Middlewest Motor Freight Bureau Section 22 Quotation 303-E.

The following counterclaimants participated in routes which would have

enabled them to perform the service, and offered to perform such service at a through rate of \$3.00 per 100 pounds (SWFB No. 1438):

Chicago, Rock Island & Pacific

Missouri-Kansas-Texas

Chicago, Burlington & Quincy

Under the existing policies of the military establishment and the then applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Chicago, Rock Island & Pacific	\$13,116.98
Missouri-Kansas-Texas	13,422.02
Chicago, Burlington & Quincy	34,470.20

McAlester (N. A. D.) Haywood or Savanna, Oklahoma
to

U. S. N. Mine Depot, Seal Beach, California

Shipments per Revised Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
December 29	1955	314,880	396

The Riss rate was established pursuant to Riss Section 22 Quotation No. AEF-2-TC via the following competing routes:

- (1) Riss & Co. to Denver, Colo.; Navajo Freight Lines, Inc.
- (2) Riss & Co. to Denver, Colo.; Rio Grande Motor Way, Inc. to Grand Jct., Colo.; Garrett Freight-lines, Inc.
- (3) Riss & Co. to Denver, Colo.; Pacific Intermountain Express Co. to Los Angeles, Calif.; Constructors Transport Co.
- (4) Riss & Co. to Denver, Colo.; Pacific Intermountain Express Co. to Los Angeles, Calif.; Southern California Freight Lines.

- (5) Riss & Co. to Denver, Colo.; Ashworth Transfer Co. to Salt Lake City, Utah; Garrett Freightlines, Inc.

The identical rate was established in Rocky Mountain Motor Tariff Bureau Section 22 Quotation No. 43-D via the following competing routes:

- (6) American Transfer & Storage Co. to Tulsa, Okla.;
Lee Way Motor Freight, Inc. to Amarillo, Tex.;
Navajo Freight Lines, Inc.
- (7) H. A. Day Truck Line to Oklahoma City, Okla.;
T. I. M. E., Inc. to El Paso, Tex.; Border Truck Line to White Sands, N. M.; T. I. M. E., Inc. to Azusa, Calif.; Constructors Transport Co.
- (8) H. A. Day Truck Line to Oklahoma City, Okla.;
T. I. M. E., Inc., to El Paso, Tex.; El Paso-Pecos Valley Truck Line to White Sands, N. M.; T. I. M. E., Inc., to Azusa, Calif.; Constructors Transport Co.
- (9) H. A. Day Truck Line to Oklahoma City, Okla.;
T. I. M. E., Inc., to El Paso, Tex.; Alabam Freight Lines to Phoenix, Ariz.; Consolidated Copperstate Lines.
- (10) H. A. Day Truck Line to Oklahoma City, Okla.; Lee Way Motor Freight, Inc., to Amarillo, Tex.; Navajo Freight Lines, Inc.
- (11) H. A. Day Truck Line to Oklahoma City, Okla.;
Lee Way Motor Freight, Inc., to Amarillo, Tex.;
Denver-Amarillo Express to Denver, Colo.; Goldstein Transportation & Storage Co., Ringsby Truck Lines, Northern Transportation Co.
- (12) Gillette Motor Transport, Inc., to El Paso, Tex.;
Western Truck Lines.

- (13) Luper Transportation Co. of Okla. to Oklahoma City, Okla.; T. I. M. E., Inc., to Azusa, Calif.; Constructors Transport Co.
- (14) Mid Continent Freight Lines, Inc., to Oklahoma City, Okla.; T. I. M. E., Inc., to Azusa, Calif.; Constructors Transport Co.
- (15) Mid Continent Freight Lines, Inc., to Oklahoma City, Okla.; Lee Way Motor Freight, Inc., to Amarillo, Tex.; Navajo Freight Lines, Inc.
- (16) Mid Continent Freight Lines, Inc., to Kansas City, Mo.; Watson Bros. Transportation Co.
- (17) Mid Continent Freight Lines, Inc., to Dallas, Texas; Merchants Fast Motor Lines, Inc., to El Paso, Tex.; Alabam Freight Lines to Phoenix, Ariz.; Consolidated Copperstate Lines.

The identical rate was also established in Southern-Plaza Express Co. Section 22 Quotation No. 54-67 via the following competing route:

- (18) Elliott Freight Lines to Atoka, Okla.; Southern-Plaza Express, Inc., to El Paso, Tex.; Alabam Freight Lines to Phoenix, Ariz.; Consolidated Copperstate Lines.

The identical rate was also established in Watson Bros. Section 22 Quotation Nos. 760A and 807 via the following competing routes:

- (19) Mid Continent Freight Lines, Inc.; Watson Bros. Transportation Co.

This route was established in Quotation No. 760-A.

- (20) Luper Transportation Co. of Okla. to Kansas City, Mo.; Watson Bros. Transportation Co.

This route was established in Quotation No. 807.

The following counterclaimants participated in routes which would have enabled them to perform the service, and offered to perform such service at a through rate of \$3.96 per 100 pounds (TCFB No. 68):

Chicago, Rock Island & Pacific

Missouri-Kansas-Texas

Under the existing policies of the military establishment and the then applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Chicago, Rock Island & Pacific \$2,493.85

Missouri-Kansas-Texas 3,192.13

Umatilla Ordnance Depot, Ordnance, Oregon
to
Sunflower Ordnance Depot, De Soto, Kansas

Shipments per Revised Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
July 24, 25, 26, 27	1954	234,016	463
Oct. 4,	1954	74,796	"
Oct. 6, 7,	1954	112,464	"
Nov. 3, 4, 5, 6,	1954	118,400	"
Nov. 8, 9, 10, 11, 12, 13	1954	414,400	"
Dec. 3,	1954	118,400	"

The Riss rate and the identical rate offered by other motor carriers for the July shipments above was established in Rocky Mountain Motor Tariff Bureau Section 22 Quotation No. 43-C over the following competing routes:

- (1) Pendleton-Portland Motor Transport to
Pendleton, Ore.; Garrett Freightlines
to Salt Lake City; Ashworth to Denver;
Riss to De Soto.
- (2) Consolidated Freightways to Billings, Mont.;
Buckingham Transportation Co. to Denver;
Riss to De Soto.

- (3) Consolidated to Billings; Buckingham to Denver or Omaha; Watson Bros. to De Soto.
- (4) Pendleton-Portland to Pendleton; Garrett to Salt Lake City; Gallagher to Denver; Watson Bros. to De Soto.
- (5) Pendleton-Portland to Pendleton; Garrett to Salt Lake City; Ringsby to Craig, Colo.; Boulder Truck Service to Denver; Watson to De Soto.

The Riss rate and the identical rate offered by other motor carriers for the remaining shipments above was also established in Rocky Mountain Motor Tariff Bureau Section 22 Quotation No. 43-C over the following routes:

- (1) Consolidated to Billings; Buckingham to Denver; Riss to De Soto.
- (2) Sites Freightlines to Pendleton; Garrett to Salt Lake City; Ashworth to Denver; Riss to De Soto.
- (3) Consolidated to Billings; Buckingham to Denver or Omaha; Watson Bros. to De Soto.
- (4) Sites to Pendleton; Garrett to Salt Lake City; Gallagher to Denver; Watson Bros. to De Soto.
- (5) Sites to Pendleton; Garrett to Salt Lake City; Ringsby and Boulder Truck to Denver; Watson Bros. to De Soto.
- (6) Consolidated to Minneapolis; Watson Bros. to De Soto (added 10/15/54).

In addition, Riss published the same rate over route (2) above in Riss Section 22 Quotation No. AEF-1.

The following counterclaimants participated in routes which would have enabled them to perform this service, and offered to perform such service at a through rate of \$4.945 per cwt. (AAR Quotation 14-A):

Union Pacific

Atchison, Topeka & Santa Fe

Under the existing policies of the military establishment and the applicable division agreements between railroads, each would have received the following revenues from the traffic transported by Riss:

Union Pacific	\$48,260.87
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Atchison, Topeka & Santa Fe	4,773.05
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Black Hills Ordnance, Provo, South Dakota
to

Indiana Arsenal, Charlestown or Watson, Indiana

Shipments per Revised Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Aug. 1, 2	1955	99,550	363
Aug. 4, 5	"	132,825	"
Aug. 10, 11	"	64,185	"

The Riss rate was established in Riss Section 22 Quotation No. AEF-3-ECD via the following competing route:

- (1) Buckingham Transportation Co. to Omaha, Neb. ;
Riss & Co.

The identical rate was established in Watson Bros. Section 22 Quotation No. 1000 via the following competing route:

- (2) Buckingham Transportation Co. to Omaha, Neb. ;
Watson Bros. to St. Louis, Mo. ; Hayes Freight
Lines to Louisville, Ky. ; Falls Cities Transfer Co.

The identical rate was also established via all motor carriers party to Middlewest Motor Freight Section 22 Quotation No. 303-E.

The following counterclaimants participated in routes which would have

enabled them to perform such service and offered to perform this service at a through rate of \$3.8065 per 100 pounds (AAR No. 14-A):

Chicago, Burlington & Quincy

Pennsylvania

Under the existing policies of the military and the applicable division agreements between railroads, each would have received the following revenues from the traffic transported by Riss:

Chicago, Burlington & Quincy	\$8,579.31
Pennsylvania	1,354.62

Black Hills Ordnance, Provo, South Dakota
to

Sunflower Ordnance Depot, De Soto, Kansas

Shipments per Revised Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
Feb. 18, 19, 20	1954	146,965	242
Feb. 22, 23, 24, 25, 26	1954	264,676	242
Feb. 28	1954	58,788	242

The Riss rate was the rate indicated in Riss Revised Schedule B.

The identical rate was established in Watson Bros. Section 22 Quotation No. 1000 via the following competing route:

Buckingham Transportation to Omaha, Neb.; Watson
Bros. Trans. Co.

The following counterclaimants participated in routes which would have enabled them to perform the service, and offered to perform such service at a through rate of \$2.6565 per 100 pounds (AAR No. 14-A):

Chicago, Burlington & Quincy

Atchison, Topeka & Santa Fe

Under the existing policies of the military establishment and the then applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Chicago, Burlington & Quincy	\$9,747.61
Atchison, Topeka & Santa Fe	2,749.33

Black Hills Ordnance, Provo, South Dakota
to

Kansas Ordnance Depot, Parsons, Kansas

Shipments per Revised Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
April 23	1954	60,060	265
April 30	"	120,120	"
May 21, 22	"	60,060	"
May 25, 26	"	60,060	"
May 28, 29	"	60,060	"
June 3, 4, 5	"	90,090	"
June 10, 11	"	60,060	"
June 17	"	60,060	"
Oct. 29, 30	"	90,090	"

The Riss rate is shown on Revised Schedule B as being the rate in effect and applicable to the above shipments. The rate is 65% of the First Class Motor Carrier rate.

The identical rate was established in Watson Bros. Section 22 Quotation No. 1000 via the following competing routes:

- (1) Buckingham Transportation Co. to Omaha, Neb.;
Watson Bros. to Kansas City, Mo.; Campbells
"66" Express.
- (2) Buckingham Transportation Co. to Omaha, Neb.;
Watson Bros. to Kansas City, Mo.; Southwest
Freight Lines.

The following counterclaimants participated in routes which would have enabled them to perform the service, and offered to perform such service at a through rate of \$2.65 per 100 pounds (WTL No. 733):

Chicago, Burlington & Quincy

Missouri-Kansas-Texas

St. Louis-San Francisco

Under the existing policies of the military establishment and the then applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Chicago, Burlington & Quincy	\$12,167.71
Missouri-Kansas-Texas	2,538.58
St. Louis-San Francisco	2,801.20

Holston Ordnance, Holston, Tennessee
to
Cornhusker Ordnance, Coplant, Nebraska

Shipments per Revised Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
June 7, 8, 9, 10	1955	220,000	285
July 6, 7	1955	110,000	285
July 18, 19	1955	110,000	285
Aug. 4, 5	1955	110,000	285
Aug. 8, 9	1955	110,000	285

The Riss rate was established pursuant to Riss Section 22 Quotation No. AEF-3-ECD via the following route:

- (1) Burlington Truckers Inc. to Bluefield, West Virginia;
Riss & Co. to Omaha, Neb.; Union Freightways.

The identical rate was established in Watson Bros. Section 22 Quotation No. 1000 via the following competing route:

- (2) Arrow Express to Parsons, Kan.; Hayes Freight Lines
to St. Louis, Mo.; Watson Bros.

The following counterclaimants participated in routes which would have enabled them to perform the service, and offered to perform such service at a through rate of \$2.93 per 100 pounds (WTL No. 708):

Chicago, Burlington & Quincy

Union Pacific

Under the existing policies of the military establishment and the then applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Chicago, Burlington & Quincy	\$4,641.12
Union Pacific	2,459.79

Holston Ordnance, Holston, Tennessee
to

Kansas Ordnance, Parsons, Kansas

Shipments per Revised Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
June 14, 15, 16, 17, 18	1954	330,000	283
June 21, 22, 23, 24, 25	1954	385,000	283
July 5	1954	55,000	283
July 7	1954	55,000	283
July 9	1954	55,000	283
July 12	1954	55,000	283
July 14	1954	55,000	283
July 16	1954	55,000	283
July 19	1954	55,000	283
July 21, 22, 23	1954	165,000	283

The Riss rate was established pursuant to Riss Section 22 Quotation No. 607-54 via the following route:

- (1) Burlington Truckers to Bluefield, W. Va.; Riss & Co.

The identical rate was established in Arrow Express Section 22 Quotation No. 15-A via the following competing route:

- (2) Arrow Express to Birmingham, Ala.; B & M Truck Line & B & M Express or Hoover Motor Express to Memphis, Tenn.; Campbells "66".

The following counterclaimants participated in routes which would have enabled them to perform the service, and offered to perform such service at a through rate of \$3.0705 per 100 pounds (AAR No. 14-A):

Missouri-Kansas-Texas

St. Louis-San Francisco

Under the existing policies of the military establishment and the then applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Missouri-Kansas-Texas \$7,768.36

St. Louis-San Francisco 7,768.37

Holston Ordnance, Holston, Tennessee
to

Hawthorn (N. A. D.) Thorne, Nevada

Shipments per Revised Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
April 1, 2	1955	110,000	622
April 18	1955	110,000	622
May 17	1955	66,000	622
May 25, 26	1955	110,000	622
June 2, 3	1955	110,000	622

The Riss rate was established pursuant to Riss Section 22 Quotation No. AEF-2-TC via the following route:

- (1) Burlington Truckers to Bluefield, Va.; Riss & Co.
to Denver, Colo.; Ashworth Transfer Co.

The identical rate was established in Arrow Express Section 22 Quotation No. 39A via the following competing route:

- (2) Arrow Express to Birmingham, Ala.; B & M Truck Lines
- B & M Express to Memphis, Tenn.; Tri-State Warehousing & Distributing Co. to Santa Fe, N. M.; Ashworth Transfer Co.

The identical rate was also established in Rocky Mountain Motor Tariff Bureau Section 22 Quotation No. 43-D via the following competing routes:

- (3) Robinson Frt. Lines to Memphis, Tenn.; Strickland Trans. to Dallas, Tex.; Gillette Motor Transport to El Paso, Tex.; Western Truck Lines to Los Angeles, Cal.; Northern Trans.
- (4) Robinson Frt. Lines to Memphis, Tenn.; Strickland Trans. to Dallas, Tex.; Sunset Motor Lines to El Paso, Tex.; Western Truck Lines to Los Angeles, Calif.; Northern Trans.

The following counterclaimants participated in routes which would have enabled them to perform the service, and offered to perform such service at a through rate of \$6.7505 per 100 pounds (AAR No. 14-A):

Southern Pacific

Under the existing policies of the military establishment and the then applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Southern Pacific \$12,540.99

Radford Arsenal, Wysor, Virginia
to
Cornhusker Ordnance, Coplant, Nebraska

Shipments per Revised Schedule B

<u>Date</u>		<u>Quantity</u>	<u>Rate</u>
July 15, 16	1954	61,790	285
Aug. 3	1954	61,790	285
Oct. 15	1954	61,790	285
Dec. 30, 31	1954	61,568	285
Feb. 9, 10	1955	61,785	285
Mar. 1	1955	61,766	285
Mar. 16, 17	1955	74,148	285

The Riss rate was established pursuant to Riss Section 22 Quotation Nos. 613-54, AEF-1 and AEF-3-ECD via the following route:

- (1) Burlington Truckers, Inc., to Bluefield, W. Va.;
Riss & Co. to Omaha, Neb.; Union Freightways.

The identical rate was established in Watson Bros. Section 22 Quotation No. 940 via the following competing route:

- (2) C.I. Whitten Transfer Co. to Cincinnati, Ohio;
Hayes Frt. Lines to Chicago, or Peoria, Ill.;
Watson Bros.

The identical rate was also established effective March 10, 1955, in C.I. Whitten Transfer Co. Section 22 Quotation No. 109 via the following competing route:

- (3) C.I. Whitten Transfer Co.; Roy Cartage Co.;
Union Freightways.

The following counterclaimants participated in routes which would have enabled them to perform the service, and offered to perform such service at a through rate of \$3.5650 per 100 pounds (AAR No. 14-A):

Chicago, Burlington & Quincy
Union Pacific

Under the existing policies of the military establishment and the then applicable division agreements between rail carriers, each would have received the following revenues from the traffic transported by Riss:

Chicago, Burlington & Quincy	\$4,200.58
Union Pacific	2,100.34

SUMMARY OF GROSS REVENUE LOST BY
ORIGIN AND DESTINATION COUNTERCLAIMANTS

NAME OF COUNTERCLAIMANT	AMOUNT
Atchison, Topeka & Santa Fe Ry.	\$1,058,225.62
Chicago, Burlington & Quincy R. R.	531,450.19
Chicago, Milwaukee, St. Paul & Pacific R. R.	173,168.99
Chicago, Rock Island & Pacific R. R.	263,584.81
Illinois Central R. R.	10,016.03
Missouri-Kansas-Texas R. R.	140,092.98
Missouri Pacific R. R.	200,878.94
Pennsylvania R. R.	622,623.27
St. Louis-San Francisco Ry.	85,714.77
Southern Pacific Co.	286,682.07
Union Pacific R. R.	747,803.22
Wabash R. R.	97,999.49
Total	\$4,218,240.38

(Certificate of Service omitted)

(HEADING OMITTED) Civil Action No. 4056-54 Filed September 12, 1960

MEMORANDUM OF COUNTERCLAIMANTS WITH REGARD TO PARAGRAPH
II OF THE COURT'S ORDER OF AUGUST 25, 1960

(Excerpts)

A.

Summary of Gross Revenues, Cost of Handling and Net Revenue,
by Counterclaimant Railroads assuming that the Shipments of Ammunition and
Explosives that moved via Riss & Company from Joliet Arsenal, Joliet, Illinois
to Ravenna Arsenal, Atlas, Ohio, during the period May 5, 1954 to June 30,
1955 had moved via the rail carriers that served these respective Military In-
stallations.

Counterclaimant	:	Gross Revenues		:	Cost of Handling		:	Net
Railroad Company	:	Page	:	Amount	:	Page	:	Revenue
AT&SF	:	B	:	\$ 6,862.71	:	C	:	\$ 4,179.70
CMst P&P	:	B	:	6,862.70	:	D	:	3,683.41
PRR	:	B	:	27,450.82	:	E	:	18,419.64
Wabash	:	B	:	6,862.70	:	F	:	4,199.08
	:		:		:		:	
TOTAL	:	-	:	\$48,038.93	:	-	:	\$30,481.83

B

AMMUNITION AND EXPLOSIVES TRANSPORTED BY KISS & CO., INC.
FROM JOLIET ARSENAL, JOLIET ARSENAL, ILLINOIS
TO RAVENNA ARSENAL, ATLAS, OHIO

SECTION 1

TONNAGE AND RAIL REVENUE IF TRANSPORTED BY RAIL

Date of movement	Weight (Pounds)	Truck Rate	Railroad Revenue if same Traffic moved via Railroad	
			Rail Rate	Revenue
May 5,6,7, 1954	357,500			
" 11,12,13,	357,500			
" 17,18,19,	357,500			
" 21	165,000			
" 25	275,000			
" 27,	137,500			
June 3,4,	110,000			
" 9,10,	385,000			
" 14,	165,000			
" 16,17,18	247,500			
" 21,22,23	165,000			
Aug. 19,	165,000			
Sept. 2,	82,500			
" 7,8,9,	467,500			
Oct. 29	165,000			
May 2,3,4,5,6, 1955	468,500			
" 9,10,11,12,13,	440,500			
" 16,17,18,19,20,	412,500			
" 23,24,25,26,28,	412,500			
June 1,2,3,	273,580			
" 6,7,8,9,10,	496,490			
" 13,14,15,16,17,	468,500			
" 20,21,22,23,24,	414,960			
" 27,28,	247,500			
" 30,	51,105			
Total - - - - -	7,288,635	122	150.65	\$109,803.29

SECTION 2

REVENUE ATTRIBUTABLE TO SPECIFIED RAILROADS BASED ON KISS TONNAGE

Railroad	Movement	Distribution of Revenue			Revenue
		Portion of total tonnage	Weight (Pounds)	Percentage of Rate	
AN&P (O)	To Chicago, Ill.	1/4	1,822,158	25	6,862.71
CM&P&P (O)	To Chicago, Ill.	1/4	1,822,159	25	6,862.70
GR&O (O)	To Chicago, Ill.	1/4	1,822,159	25	6,862.71
Wabash (O)	To Chicago, Ill.	1/4	1,822,159	25	6,862.70
Erie (T)	From Chicago, Ill.	1/3	2,429,545	75	27,450.83
IL&O (T)	From Chicago, Ill.	1/3	2,429,545	75	27,450.82
P RR (T)	From Chicago, Ill.	1/3	2,429,545	75	27,450.82
Total Carloads 84				Total - -	\$ 109,803.29

SECTION 3

SUMMARY OF REVENUE FOR COUNTERCLAIMANT RAILROADS

Railroads	Revenue
AN&P	\$ 6,862.71
CM&P&P	6,862.70
Wabash	6,862.70
P RR	27,450.82
Total - -	\$ 48,038.93

(O) Origin Line (Rates in cents per 100 pounds)
(T) Terminating Line ‡ Not included in counterclaim.

AUTHORITIES

Truck Rates and Tonnage: Kiss & Co., Inc., Revised Schedule "B" - Pages 116.

Rail Rates: Section 22 Quotation AAR No. 14-A.

Divisions: Western Trunk Line - Division Sheet No. 575.

C.

COST OF HANDLING

Counterclaimant - Atchison, Topeka and Santa
Fe Railway Company

Operating Units

Movement - From Joliet Arsenal, Illinois
To Chicago, Illinois

Distance (Miles)	49
Number Carloads (O)	21
Number of Hundred Weight	18,221.58
Number of Car Miles	1,029
Number of Hundred Weight Miles	892,857

Estimated Cost of Handling

<u>Out-of-Pocket</u>		<u>Cents</u>	<u>Total</u>
<u>Line Haul</u>			
1,029 Car Miles at		22.09142	\$ 227.32
892,857 Cwt. Miles at		.01039	92.77
<u>Terminal</u>			
21 Carloads (O)	at	6714.241	1,409.99
18,222 Cwt.	at	1.11145	202.53
<u>Constant</u>			
<u>Line Haul</u>			
892,857 Cwt. Miles	at	.01735	154.91
<u>Terminal</u>			
18,222 Cwt.	at	3.268	<u>595.49</u>
Total Cost			\$2,683.01

(O) - Originated.

D

COST OF HANDLING

Counterclaimant - Chicago, Milwaukee, St. Paul and
Pacific Railroad Company

Operating Units

Movement	-	<u>From Joliet Arsenal, Illinois. To Chicago, Illinois.</u>
Distance (Miles)		100.2
Number of Carloads (O)		21
Hundredweight (Cwt. -100 pounds)		18,221.59
Number of Car Miles		2,104
Number of Cwt. Miles		1,825,803

Estimated Cost of Handling

<u>Out-Of-Pocket</u>	<u>Cents</u>	<u>Total</u>
<u>Line Haul</u>		
2,104 Car Miles	22.09142	\$ 464.80
1,825,803 Cwt. Miles	.01039	189.70
<u>Terminal</u>		
21 Carloads (O)	6,714.241	1,409.99
18,222 Cwt.	1.11145	202.53
<u>Constant</u>		
<u>Line Haul</u>		
1,825,803 Cwt. Miles	.01735	316.78
<u>Terminal</u>		
18,222 Cwt.	3.268	595.49
<u>Total Cost</u>		<u>\$3,179.29</u>

(O) - Originated

E

COST OF HANDLING

Counterclaimant - Pennsylvania Railroad Company

Operating Units

Movement	-	<u>From Chicago, Illinois</u> <u>To Atlas, Ohio</u>
Distance		407
Number of Carloads (T)		28
Hundredweight (Cwt. - 100 pounds)		24,295.45
Number of Car Miles		11,396
Number of Cwt. Miles		9,888,248

Estimated Cost of Handling

<u>Out-of-Pocket</u>	<u>Cents</u>	<u>Total</u>
<u>Line Haul</u>		
11,396 Car Miles	31.50019	\$3,589.76
9,888,248 Cwt. Miles	.01085	1,072.87
<u>Terminal</u>		
28 Carloads (T)	4,994.261	1,398.39
24,295 Cwt.	2.03545	494.51
<u>Constant</u>		
<u>Line Haul</u>		
9,888,248 Cwt. Miles	.01769	1,749.23
<u>Terminal</u> 24,295 Cwt.	2.99	<u>726.42</u>
Total Cost		\$9,031.18

(T) - Terminated.

F

COST OF HANDLING

Counterclaimant - Wabash Railroad Company

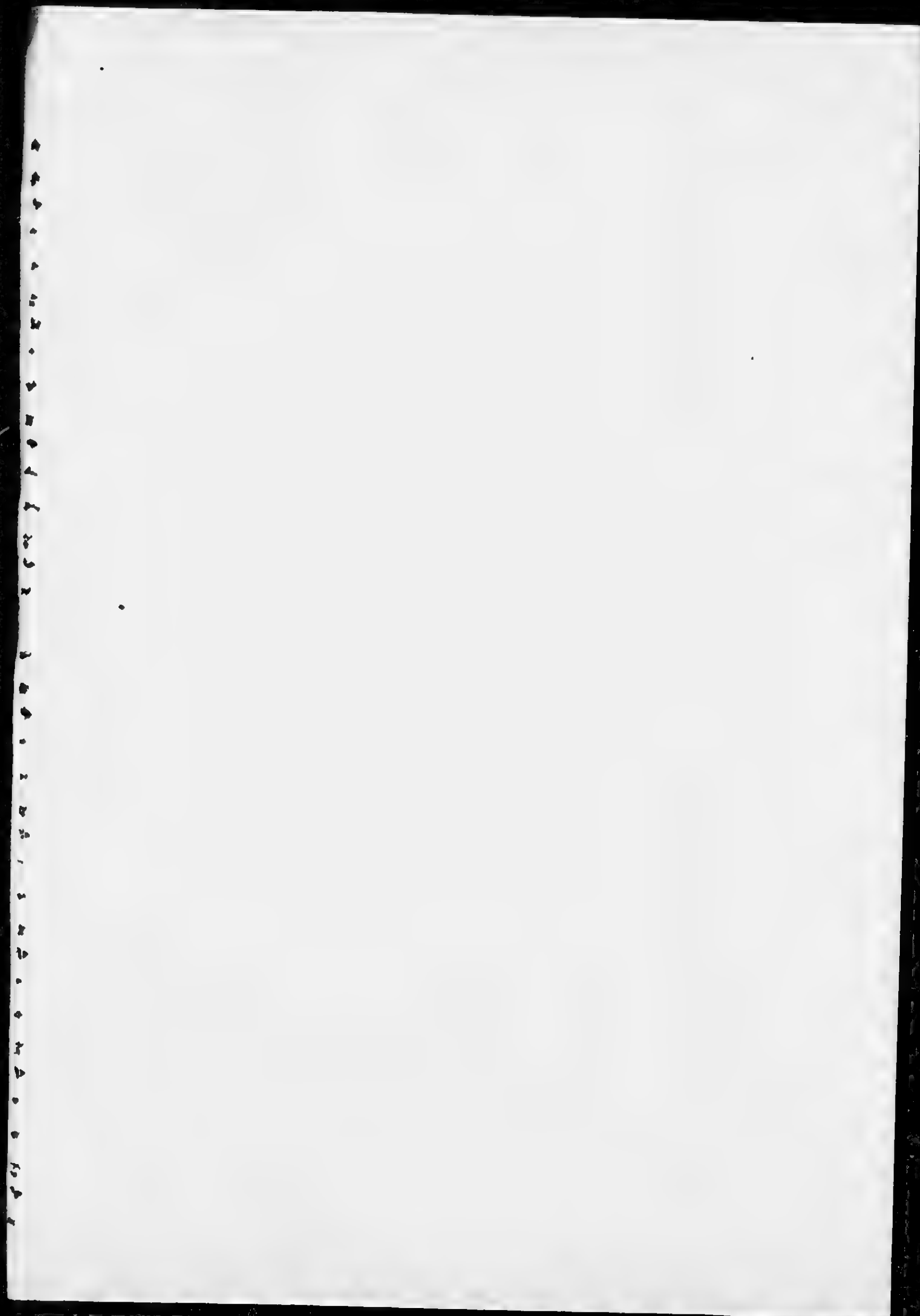
Operating Units

Movement	<u>From Joliet Arsenal, Illinois To Chicago, Illinois</u>
Distance (Miles)	47
Number of Carloads (O)	21
Hundredweight (Cwt. - 100 pounds)	18,221.59
Number of Car Miles	987
Number of Cwt. Miles	856,415

Estimated Cost of Handling

<u>Out-of-Pocket</u>	<u>Cents</u>	<u>Total</u>
<u>Line Haul</u>		
987 Car Miles	22.09142	\$ 218.04
856,415 Cwt. Miles	.01039	88.98
<u>Terminal</u>		
21 Carloads (O)	6,714.241	1,409.99
18,222 Cwt.	1,11145	202.53
<u>Constant</u>		
<u>Line Haul</u>		
856,415 Cwt. Miles	.01735	148.59
<u>Terminal</u>		
18,222 Cwt.	3.268	<u>595.49</u>
Total Cost		\$2,663.62

(O) - Originated



JOINT APPENDIX
VOLUME III

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Nos. 16,206, 16,255, 16,376

THE ASSOCIATION OF WESTERN RAILWAYS,)
TRAFFIC EXECUTIVE ASSOCIATION-EASTERN)
RAILROADS, EASTERN RAILROAD PRESIDENTS)
CONFERENCE, et al.,)

Appellants,)

v.)

RISS & COMPANY, INC.,)

Appellee.)

THE ATCHISON, TOPEKA & SANTA FE RAILWAY)
COMPANY; CHICAGO, BURLINGTON & QUINCY)
RAILROAD COMPANY; CHICAGO, MILWAUKEE,)
ST. PAUL & PACIFIC RAILROAD COMPANY, et al.,)

Appellants,)

v.)

RISS & COMPANY, INC.,)

Appellee.)

Nos. 16,206

and 16,376

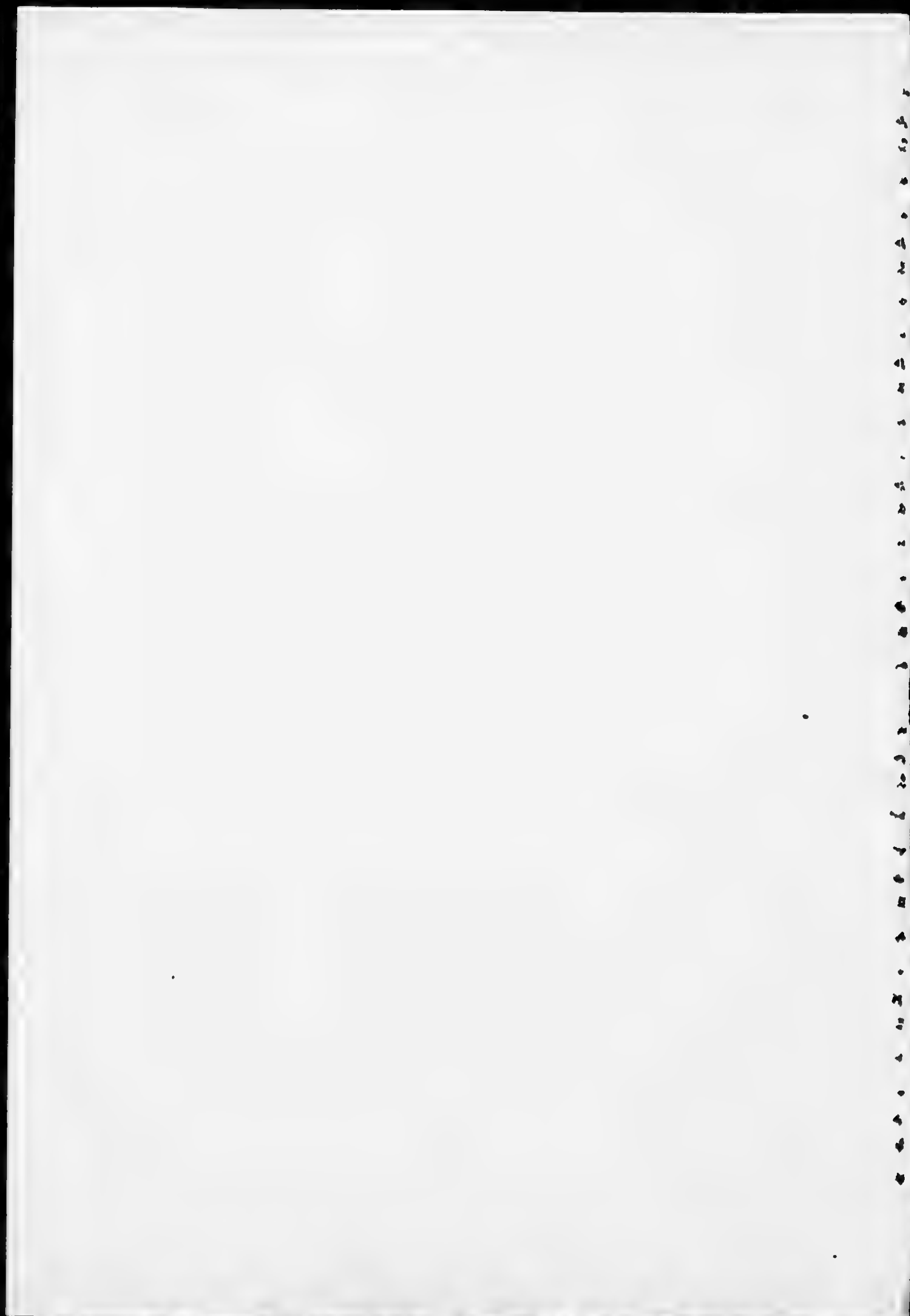
No. 16,255

Appeal from a Judgment of the
United States District Court for the District of Columbia

CONTENTS

Pages 637 to 832

United States Court of Appeals
For the
District of Columbia
FILED OCT 16 1951
Joseph W. Stewart
CLERK



INDEX

VOLUME III

	<u>Page</u>
Counterclaim Document #1	637
Counterclaim Document #2	638
Counterclaim Document #3	639
Counterclaim Document #4	643
Counterclaim Document #5	645
Counterclaim Document #6	646
Counterclaim Document #7	647
Counterclaim Document #8	648
Counterclaim Document #9	649
Counterclaim Document #10	650
Counterclaim Document #11	651
Counterclaim Document #12	652
Counterclaim Document #13	653
Counterclaim Document #14	655
Counterclaim Document #15	656
Counterclaim Document #16	659
Counterclaim Document #17	660
Counterclaim Document #18	662
Counterclaim Document #19	663
Counterclaim Document #20	665
Counterclaim Document #21	667
Counterclaim Document #22	668
Counterclaim Document #23	669
Counterclaim Document #24	670
Counterclaim Document #25	671
Counterclaim Document #26	673
Counterclaim Document #27	675
Counterclaim Document #28	678

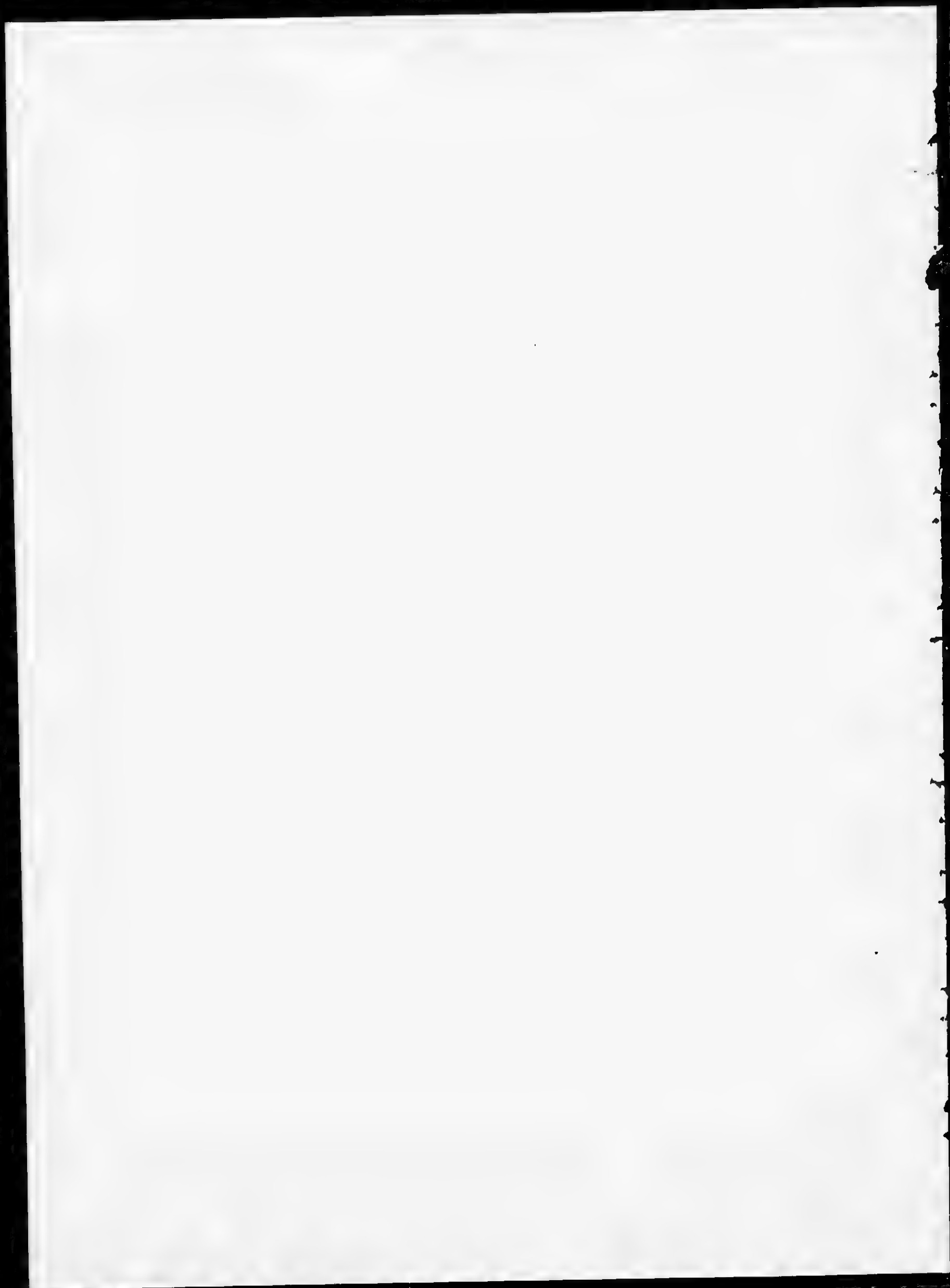
(x) .

	<u>Page</u>
Counterclaim Document #29	679
Counterclaim Document #30	681
Counterclaim Document #31	682
Counterclaim Document #32	683
Counterclaim Document #33	684
Counterclaim Document #34	685
Counterclaim Document #35	687
Counterclaim Document #36	688
Counterclaim Document #37	689
Counterclaim Document #38	690
Counterclaim Document #39	691
Counterclaim Document #40	692
Counterclaim Document #41	693
Counterclaim Document #42	694
Counterclaim Document #43	695
Counterclaim Document #44	697
Counterclaim Document #45	698
Counterclaim Document #46	699
Counterclaim Document #47	700
Counterclaim Document #48	701
Counterclaim Document #49	702
Counterclaim Document #50	705
Counterclaim Document #51	706
Counterclaim Document #52	707
Counterclaim Document #53	708
Counterclaim Document #54	709
Counterclaim Document #55	710
Counterclaim Document #56	711
Counterclaim Document #57	712

	<u>Page</u>
Counterclaim Document #58	713
Counterclaim Document #59	715
Counterclaim Document #60	716
Counterclaim Document #61	717
Counterclaim Document #62	718
Counterclaim Document #63	719
Counterclaim Document #64	720
Counterclaim Document #65	721
Counterclaim Document #66	723
Counterclaim Document #67	724
Counterclaim Document #68	725
Counterclaim Document #69	726
Counterclaim Document #70	727
Counterclaim Document #71	728
Counterclaim Document #72	729
[There is no Counterclaim Document #73]	
Counterclaim Document #74	733
Counterclaim Document #75	735
Counterclaim Document #76	737
Counterclaim Document #77	738
Counterclaim Document #78	739
Counterclaim Document #79	740
Counterclaim Document #80	742
Counterclaim Document #81	743
Counterclaim Document #82	744
Counterclaim Document #83	745
Counterclaim Document #84	746
Counterclaim Document #85	750
Counterclaim Document #86	751

	<u>Page</u>
Counterclaim Document #87	753
Counterclaim Document #88	754
Counterclaim Document #89	755
Counterclaim Document #90	756
Counterclaim Document #91	757
Counterclaim Document #92	758
Counterclaim Document #93	763
Counterclaim Document #94	764
Counterclaim Document #95	769
Counterclaim Document #96	771
Counterclaim Document #97	772
Counterclaim Document #98	775
Counterclaim Document #99	776
Counterclaim Document #100	777
Counterclaim Document #101	778
Counterclaim Document #102	779
Counterclaim Document #103	781
Counterclaim Document #104	783
Counterclaim Document #105	784
Counterclaim Document #106	785
Counterclaim Document #107	787
Counterclaim Document #108	789
Counterclaim Document #109	790
Counterclaim Document #110	791
Counterclaim Document #111	792
Counterclaim Document #112	793
Counterclaim Document #113	794
Counterclaim Document #114	796
Counterclaim Document #115	799

	<u>Page</u>
Counterclaim Document #116	800
Counterclaim Document #117	801
Counterclaim Document #118	802
Counterclaim Document #119	803
Counterclaim Document #120	804
Counterclaim Document #121	805
Counterclaim Document #122	806
Counterclaim Document #123	808
Counterclaim Document #124	809
Counterclaim Document #125	810
Counterclaim Document #126	811
Counterclaim Document #127	812
Counterclaim Document #128	813
Counterclaim Document #129	814
Counterclaim Document #130	815
Counterclaim Document #131	816
Counterclaim Document #132	817
Counterclaim Document #133	818
Counterclaim Document #134	819
[There is no Counterclaim Document #135]	
Counterclaim Document #136	820
Counterclaim Document #137	821
Counterclaim Document #138	822
Counterclaim Document #139	823
Counterclaim Document #140	830



- 637 -

Counterclaim Document No. 1

No. 834 - 12-26-52

Clear out old files - 1952 - Destroy such as not needed.

Counterclaim Document No. 2

INTER-OFFICE CORRESPONDENCE

RISS & COMPANY, INC.

To: Don Stone

From: Cal Rhodebeck

1/21/47

Dear Don:

Further to mine of yesterday written from Baltimore regarding section 22 quotation for Mr. Baker of the War Dept. As I explained the only way we can get any of the Army traffic in Middle Atlantic territory is by doing this which puts us on a par generally with rail. His office will check our rate vs rail before routing any shipment in this area and if we are 1¢ lower we get all the movement if on a par with rail it will be split and if we are 1¢ over rail we get none. The proposed quotation has the effect of making column 2 rates applicable in tables A B & C of master tariff #5 of hearings. I have to go back to Washington Wed the 29th-31 and see the Air Corps, Navy, Treasury Dept. of Agriculture and Post Office and see what we can get from them on the same basis and when I know just who to write to I will advise and you can issue section 22 quotations to each one. Was advised better to do that than just one to all agencies. It looks as tho we are really in line for some nice short haul traffic as soon as you get that quotation in to Bakers office. Besides sending copies to Wolfe Moore and me add Williams at North Bergen Geary at Boston. Am now working on a set up which will give us New York Boston and Springfield Mass; every pound of that is now rail because the screwy New England rate structure is way off the rail basis.

Counterclaim Document No. 3
Page one

RISS & COMPANY, INC.
KANSAS CITY 4, MISSOURI

9328 -215th Street
Queens Village Long Island NY
Feb. 1st 1947

Don Stone:

Dear Don:

This week in Washington Lou Hanrahan of the Baltimore office and I called on most of the government agencies in Washington where traffic is routed to find out the effect of Warings new rates. The answer in all offices was the same - no premium will be paid for transportation - the common carrier with the lowest rate consistent with the service required will get the business and since most of Warings rates are above rail we can only hope for the crumbs. We suggested Warings Master tariff rates without area arbitraries on TL and volume shipments and all want confirmation.

Then to be on the up and up I told the Waring bureau what I was proposing we do and they thought an atom bomb went off. I told them because they have nice enough to clear with the carriers all section 22 quotations they can which are made by other truck lines. They suggested that we not use the Master Tariff rates less arbitraries but use the column 3 rates less arbitraries in Tables A B C of the Master Tariff which as explained in another letter of today result in rates averaging 1.75% less than the new rail class rates. That is as close as we can come unless the exact class scales by rail are published.

Don I am sorry I have had to write so many letters about these Waring rates but it has taken hours and hours to get to the bottom of them and try to find a solution that will work and get us some traffic.

Counterclaim Document No. 3
Page two

Therefore please prepare section 22 quotations for the government offices listed below using the format of quotation no. 101; use the note No. 1 of that original quotation revised as per Mr. Bakers letter of Jan. 27th which merely clarified the wording but add to that note that the rates will be as per column 3 of tables A B & C of the master tariff, no. 5. Mr. Mayo of the Navy bureau of supplies and accounts wanted to add note 2 of your original quotation no. 98 but I cannot see that as it would leave us open to protect rail charges which might result in charges less than the bureau truck rates and freeze outs so I recommend against using that note no. 2.

Office of the Chief of Transportation
Commercial Traffic Section
Freight Transportation Branch
Pentagon Bldg., Washington 25, D. C.

Navy Department
Bureau of Supplies and Accounts
Transportation Section
Room J 1515
Temporary Bldg. J
Washington, D. C.

Bureau of Engraving & Printing
14th & 6th Streets, S. W.
Washington, D. C.

Attention: Mr. P.B. Ashburn

U. S. Treasury Dept.
Traffic Division
7th & D Sts., S. W.
Washington, D. C.

Attention: Mr. Burgess Room 4011

U. S. Treasury Dept.
Traffic Division
7th & D Sts., S. W.
Washington, D. C.

Attention: Mr. W.E. Hayghe

U. S. Treasury Dept.
641 Washington Street
New York City

Attention: Mr. A. P. Baker

Counterclaim Document No. 3
Page three

Army Air Corps
Gravelly Point
Washington, D. C.

Attention: M. Capt. J.M. Boyd

Department of Agriculture
Mr. E. J. Schoen
Chief of Shipping Division
Production Market Adm.
14th & Independence Ave. S.W.
Washington, D. C.

Department of Agriculture
Mr. A. Sicotti
210 East Lexington Street
Baltimore, Maryland

Department of Agriculture
Mr. Joseph Diegan
Bronx Municipal Market
East 151st and Exterior Ave.
New York City

U. S. Treasury Dept.
Market Street National Bank Bldg. Attention: Mr. A.R. Greer
Philadelphia, Pa. Room 602

You will note the Treasury and Agriculture have offices outside Washington and wish quotations sent direct to those offices. The Air Corps installations outside Washington can route their own freight so we will have to send direct to them as soon as we contact them and get the correct addresses for you.

Send copies of your quotations to our offices in Boston, North Bergen, Philadelphia, Baltimore, Washington, Reading, Pittsburgh, and to me, also Charleston.

Send a covering letter with each quotation giving the addresses etc. of our offices as follows;

Boston, Mass. - 909 Mass. Ave. Phones Highlands 9034, 1440
North Bergen New Jersey - 3700 Tonnelie Ave. Phones Union 7-1775
7-8908
7-3928
7-6176

Counterclaim Document No. 3
Page four

Philadelphia Pa-1505 N. 5th St. Phones Fremont 7-3288, 7-6416
Reading, Pa. - 3rd & Buttonwood Streets Phones Reading 4-3388,
4-3884
Baltimore, Md. 731 East Fort Ave. Phones South 0860, 0861, 0813
Washington, D. C. 4th & Bryant Sts. N.E., Phone Adams 3274
Pittsburgh, Pa. 1435 Penn Ave. Phone Atlantic 3625
Charleston West Va., 838 Pennsylvania Ave. Phone Charleston 2-8463

Within the next two weeks I expect to have offices opened in York and Harrisburg Pa., Syracuse and Rochester, N.Y. and possibly others so then we will have to add them to the list.

I have no assurance of how much business this will produce but at least we will be competitive and can keep soliciting the business.

Warings office just called and said they were calling a meeting of the carriers at the Governor Clinton Hotel NYC 9:30 a.m. Feb. 11th to discuss government rates etc. and would I be present. I expect to be there and take their abuse.

Regards,

Cal Rhodebeck

Counterclaim Document No. 4

INTER-OFFICE CORRESPONDENCE

RISS & COMPANY, INC.

To: Don Stone

From: Cal Rhodebeck

May 16, 1947

Dear Don:

I spent Tuesday in Washington attending the rate com. meeting of Warings at which govt. rates were discussed plenty. Enclosed is sample of the conversion table they prepared showing the actual rail class rates according to Warings rate scales. The final result - no general section 22 for the govt. on rail basis; - so that is a dead duck for now. I asked Cliff Carter to prepare notes necessary to accompany this conversion table such as alternative application of class and commodity rates etc. etc. and he is doing that and I will have to check it against all the notes in 11D where terminal city arbitraries apply - other than in the master tariff. As I wrote as of July 1 the master tariff will be cancelled and we will have nothing to tie our section 22 quotation to - so we have to have this conversion. Then I discussed the matter with the War Dept. They want one general quotation to come thru the bureau for middle atlantic territory. They have it that way in other territories especially the south and I saw the files where the War Dept. handles quotations with the bureau for account of any or all carriers who want to participate. The War dept. appreciates our fight for uniformity and wants to see the quotation we prepare for after July 1st before it is filed. I told Baker I would work it out and confer with him.

For the balance of the time until July 1st Baker suggested we revert to our quotation 101 Amended instead of present 101A and I wrote you under separate cover to please do that at once. If I could see you Don I could explain what I cannot put in a letter but even tho you think I am crazy changing this general quotation so much just have faith that there is good reason and in good cause.

Counterclaim Document No. 4
Page two

I think our tonnage records reflect that. Will keep you posted re progress of the quotation to be filed July 1st. meanwhile consider whether or not you might go along with the War dept. and let the bureau file it for our account. I think it might be a smart thing to do but wish you could spend an hour with Baker and get his views and see the files on the other bureaus where this is in operation.

Cal

In view of recent supreme court decision re North South differentials we shall wait a week to learn what the commission will order into effect. Some doubt in Washington if they will or will not order in the 10% increase in the north and 10% reduction in south.

If any increase ordered in the North then the enclosed table will have to carry two scales of rates - One for exception ratings - which will be as per the enclosed table - and a new set of rate scales depending on the percentage increase to cover classification ratings.

Counterclaim Document No. 5

Mr. C. H. Rhodebeck
Long Island, N. Y.

June 19, 1947
Kansas City, Mo.

Dear Cal:

I am returning the enclosures received with your IOC of the 17th relating to Quotation 101-B.

In view of Mr. Baker's attitude, expressed not only to you but to Mr. Johnson on several occasions, we will go along with the quotation of rates on Government freight through the bureaus, including Warings.

You may go ahead with your negotiations with Carter, and if anything further is needed from this office, please let me know.

Yours very truly,

D. C. Stone

DCS/a

Encls.

Counterclaim Document No. 6

INTER-OFFICE CORRESPONDENCE

RISS & COMPANY, INC.

From: Cal Rhodebeck

To: Don Stone

16 Oct. 1947

Dear Don:

Your IOC 11th re Quotation 101. I note you do not wish to cancel it in so far as it conflicts with Govt. rate sheet 70 of Warings until you have supplement to 70 making that publication applicable to all government agencies. I trust by now you have received supplement and can cancel 101 within the territory where 70 applies. As it stands we have 2 quotations in effect and 101 is the lower and very embarrassing when I try to tell the other lines we are on a parity with them in 70- they say "Oh yeah" "what about 101?" We are working on a similar rate sheet to apply in the balance of Warings territory.

Cal

Counterclaim Document No. 7

INTER-OFFICE CORRESPONDENCE

RISS & COMPANY, INC.

To: Don Stone

From: Cal Rhodabeck

Date: 5 April 48

Dear Don:

Regarding section 22s on Govt. post cards.

I was discussing these rates with John Reimels eastern Traffic manager for Interstate Motor Freight System. We would like to see these rates raised but John and I agree if our respective companies raise the rates and the others do not, we just will not haul any post cards.

He asked me to write you and ask if you or Hester whoever attends the next Eastern Central rate meeting, would contact Mr. George Shook Traffic Mgr. of Interstate and discuss the matter with him. Roadway, Schreiber and other conference carriers have quotations same as we and Interstate have so perhaps a general informal discussion around the table at the meeting might help.

Also Interstate and others now have 96¢ to Louisville whereas we have 98¢. It will have to be met if we want any Louisville loads.

Please let me know if anything develops.

Regards,

Cal

Counterclaim Document No. 8

May 24, 1948

C. H. Rhodebeck

Long Island, New York

North Kansas City, Mo.

This is in regard to your IOC of April 5 involving Section 22 quotations.

This matter was discussed with interested carriers present and it was the opinion of carriers that the future individual quotations should be on the basis of Column 55, minimum weight 20,000 lbs.; however, it would be useless for those holding that opinion to file such a proposal unless this basis was universally adopted. I found that we had higher rates to Louisville and that we had lower rates to some points. All of those present did not have their quotations with them.

Is there any reason why we do not include Pittsburgh in our list of destinations in our quotation? The present quotation basis produces a rate of 64¢ and proposed basis of 71¢. A column 55 would result in an increase to all points except Buffalo, New York. I presume that whoever made the original quotation at Buffalo, New York had no competition at that time because the 74¢ rate appears to be exactly the Column 55 rate today. With this information, no doubt, you can carry on from your end.

I expressed the opinion that the quotation should be made and read from Washington to the destinations served by the quoting carrier including destinations to which quoting carrier had concurrences at a minimum weight of 20,000 lbs. In lieu of the rate, the basis should read "55 per cent of the current first-class rate in effect on date of movement." This will automatically take care of any changes in rates.

M. P. Hester

MPH:bw

COPY

Counterclaim Document No. 9

INTER-STATE MOTOR FREIGHT SYSTEM
Grand Rapids, Michigan

August 10, 1948

Mr. W.F. Stiegale
Roadway Express, Inc.
97 East South Street
Akron 11, Ohio

Mr. G.C. Hillard, A.G.T.M.
Shirks Motor Express Corp.
Manheim Pike
Lancaster, Pa.

Mr. Hessler
Riss & Co.
2029 W. Hubbard St.
Chicago, Illinois

Mr. R.J. Barr
All States Freight, Inc.
1142 Newton Street
Akron 9, Ohio

Gentlemen:

You will recall the little get-together we had at the May meeting of the Bureau held in Cleveland, Ohio, regarding the increasing of rates quoted under Section 22 on Government Post Cards. I made known at the time rates we have quoted and it was expressed by one or more of those present that it was their desire to check rates that have been competitively quoted and on file with the Post Office Department of Washington. Surely the Post Office Department would expect these Government quotations to be increased the same as rates have been generally increased and it would seem to be in order that something be done along this line. I would like an expression from each one of you
Gentlemen.

Yours very truly,

INTERSTATE MOTOR FREIGHT SYSTEM

/s/ G.W. Shook
Freight Traffic Manager - Rates

G.W. Shook: bm

Counterclaim Document No. 10

SHIRKS MOTOR EXPRESS CORPORATION
Lancaster, Pa.

Mail to
Mr. Hester
KC off

August 20, 1948
Dictated August 12, 1948

G. W. Shook
Freight Traffic Manager - Rates
Inter-State Motor Freight System
Grand Rapids, Michigan

Dear Mr. Shook:

We have your letter of August 10, 1948 referring to our May conversation in Cleveland regarding the possibility of increasing Section 22 rates on government postal cards.

In line with the above conversation I have checked with our people at Baltimore to find out who beside carriers entering into the discussion were handling the government postal cards. I find that Schreiber Trucking Company is handling a considerable volume of this traffic and I believe that it would be necessary to obtain their views before new quotations are issued.

We are still anxious to see the rates on government postal cards increased and in the event that Schreiber's concurrence is not obtained we would be willing to increase those rates to points where Schreiber does not operate directly.

We will appreciate your comments.

Very truly yours,

SHIRKS MOTOR EXPRESS CORP.

/s/ G. C. Hillard
General Traffic Manager

GCH:jt

cc: Mr. W. F. Stiegele, Akron 11, Ohio
Mr. Hessler, Chicago, Illinois
Mr. R. J. Barr, Akron 9, Ohio

Counterclaim Document No. 11

August 26, 1948

Mr. G. C. Hillard,
General Traffic Manager
Shirks Motor Express Corporation
Lancaster, Pennsylvania

Dear Mr. Hillard:

This will acknowledge your letter of August 20 referring to discussion in Cleveland in connection with Section 22 rates on Government postal cards.

At the time of the discussion, the Schreiber Trucking Company was mentioned. It is my understanding that someone in the eastern area was to contact this carrier and obtain his views relative to an adjustment in those rates.

I quite agree with the expression in your letter of August 20 that such contact is necessary before any new quotations are issued.

Yours very truly,

RISS & COMPANY, INC.

M. P. Hester
General Traffic Manager

WPH:bb

cc: G. W. Shook, Inter-State Motor Freight System, Grand Rapids, Mich.

W. F. Stiegale, Roadway Express, Inc. Akron, Ohio

R. J. Barr, All States Freight, Inc., Akron, Ohio

bcc: C. H. Rhodebeck, Long Island, New York

Counterclaim Document No. 12

CENTRAL FREIGHT LINES, INC.

General Offices-Waco, Texas

October 11, 1948

D. C. Stone, Director of Traffic
Riss & Company, Inc.
9th & Burlington
North Kansas City 16, Missouri

Dear Mr. Stone:

Thanks for your letter of September 29.

We are thoroughly sold on handling our rate quotations to the Government through Mr. J. D. Hughett. The benefits to us in additional tonnage from the Government have been great and we have been advised by the Traffic Control Section of the Army that this method is much preferred as it is more simple to determine the quotations on file. We have no hesitancy in saying that Mr. Hughett will see that the tariff will fully protect you regardless of origin or destination. In addition, Mr. Hughett is frequently in contact with these officials so that he is better prepared to keep abreast of their needs and we think that his action in the past has shown that in many instances he was able to determine information which enabled us to avoid filing quotations any lower than absolutely necessary.

We are returning the quotations forwarded with your original letter of September 17, and as soon as we receive a copy of your letter requesting Mr. Hughett to file these quotations, we will concur.

Yours very truly,

CENTRAL FREIGHT LINES, INC.

/s/ George W. Adams
Traffic Manager

GWA:ivy

Counterclaim Document No. 13

MIDDLEWEST MOTOR FREIGHT BUREAU
Kansas City 6, Missouri

February 28, 1949
File: Section 22 Quotations

IMPORTANT

To All Members,

Some time in 1947 the War Department sought to have the motor carriers in this territory authorize this Association to publish in tariff form all quotations and rate tenders made to that department under Section 22 of the Interstate Commerce Act. A meeting was held in this city on December 16, 1947 to ascertain the consensus of the members on the matter. On January 12, 1948 a power of attorney form was sent to all members to be executed by those desiring the publication, and returned with copies of any Section 22 Quotations which had been made and were still in effect. The response was very meager, consequently the project was deferred.

Earlier this month, I met with several carriers and a representative of the Department of the Army in Omaha, Nebraska, to discuss again this subject. The Army representative explained his department desires these quotations to be made thru and published by a central carrier organization such as this association, as is being done in some of the other territories and eventually will be done in still more. He explained the advantages of this plan that would result to the carriers and the Department of the Army, which will include the Air Force, and stated that, upon adoption of the plan by the motor carriers, future quotations to those governmental organizations would not be accepted until they were cleared thru this association. This means that, altho one of our members sent a quotation direct to the Department of the Army or to the Air Forces, such quotation would be returned to this office for clearance and

Counterclaim Document No. 13
Page two

publication for the account of all competitive carriers desiring to join in it. Moreover, copies of all quotations now on file with the Army and the Air Forces will be sent to us by the Washington offices for such action.

We should like to know whether or not any member line has any objection to this proposed procedure. If objections are not expressed to us in writing by March 15, 1949, this office will publicize by appropriate bulletin to the membership, all Section 22 quotations which have been received by us from the Department of the Army by that date; prepare to publish such quotations for all carriers desiring to participate therein, and establish a procedure for similar treatment of any future quotations or rate tenders to the Army and the Air Forces.

We should appreciate your early response, if any is forthcoming.

Cordially yours,

/s/ J. D. Lawson
General Manager

JDL:gb

(237)

Counterclaim Document No. 14

COPY

March 7, 1949

Mr. J. D. Lawson, General Manager
Middlewest Motor Freight Bureau
Post Office Drawer No. 2298
Kansas City 6, Missouri

Dear Mr. Lawson:

This will acknowledge your letter of the 20th regarding Section 22 quotations.

As you know we are heartily in favor of all Section 22 quotations being published through bureaus and will co-operate with you to the fullest extent.

Yours, truly,

RISS & COMPANY, INC.

D. C. Stone
Director of Traffic

DCS/ea

Counterclaim Document No. 15
Page one

MIDDLEWEST MOTOR FREIGHT BUREAU
Kansas City 13, Missouri

April 14, 1949

Riss & Company, Inc.
9th & Burlington Streets
North Kansas City 16, Missouri

Gentlemen:

Copies of the government quotations that you have on file with the Department of the Army have been received by us and we are now preparing a list of quotations to be circulated among all members, preparatory to publication in a Government Rate Sheet issued by this association. For your information, a description of the quotations you have on file are shown on the attached sheets.

The original issue of the Government Rate Sheet will contain all quotations that we have received and will be issued for the account of all member carriers having quotations on file with the Army, and for the account of any other interested carrier, unless objections are received on or before April 25, 1949. In event you desire any of the rates shown on the attached sheets cancelled, please so advise by return mail, so that such rates will not be erroneously publicized to other carriers by us.

In order that you may be shown as a participant in the first issue of the Government Rate Sheet, it is requested that you furnish us with the necessary authorization by executing and returning the enclosed Government Quotation Power of Attorney. Please give this matter attention not later than April 25, 1949.

Cordially yours,

Encl. P/A
cc: Nielson & Petersen, Inc.
Grand Island, Nebraska

/s/ J. D. Lawson, General Manager

Counterclaim Document No. 15
Page two

File: Section 22 Quotations
RISS & COMPANY, INC.

COMMODITY	APPLICATION			
	BETWEEN	AND	RATE	MIN. WT.
Ammunition, explosive, incendiary or gas, smoke or tear producing; Ammunition, not explosive, incendiary, gas, smoke or tear producing. Explosives, Ordnance, described under these headings in N.M.F.C. No. 9, MF-ICC No. 17 (Quotation No. 21, effective Aug. 1, 1948 expires Dec. 31, '49)	Military Installations served by Riss & Company, Inc.	Military Installations served by: Buckingham Transportation Co., Oliver L. Buckingham, Glen O. Buckingham, Harold D. Buckingham and Earl F. Buckingham, d/b/a. Interstate Motor Freight Lines, Inc. Red Ball Transfer Company, Matthew Leo McKeone, Sr., Matthew Leo McKeone, Jr., Jos. James McKeone & Albert Jos. McKeone d/b/a. Union Freightways, Union Transfer Co., d/b/a.	65% of current first class rates.	50,000
Scrap Brass (Quotation No. 4, effective Jan. 1, 1949, expires December 31, 1949) Concurring Carrier: Nielson & Peterson	BETWEEN Ft. Riley, Kansas	AND Sioux Ordnance Works, near Sidney, Nebr.	RATE (in cents per Cwt.) 50	MIN. WT. 20,000

Counterclaim Document No. 15
Page three

COMMODITY	FROM	TO	RATE	MIN.
Explosives, ammunition (not small arms) dangerous articles; and Ordnance Stores as described in N.M.F.C. No. 9, MF-ICC No. 17 (Quotation No. 3, effective Jan. 1949, expires December 31, 1949).	Ft. Riley Kansas	Sioux Ordnance Works, near Sidney, Nebr.	6% of applicable first class rate.	[Illegible]
	BETWEEN	AND	RATE	MIN.
Explosives, ammunition (not small arms); dangerous articles and Ordnance Stores, as described in N.M.F.C. MF-ICC No. 9. NOT applicable first class rates subject to current first class rates. (Quotation No. 2, effective Jan 1, 1949, expires Dec. 31, 1949.)	All points served by Riss & Company, Inc.	All points served by: Riss & Company, Inc.	75% of applicable first class rates (See Note) 65% of applicable first class rates (See Note)	[Illegible] [Illegible]

Counterclaim Document No. 16

April 21, 1949

Mr. J. D. Lawson, General Manager
Middlewest Motor Freight Bureau
Post Office Drawer 2298
Kansas City 6, Missouri

Dear Mr. Lawson:

This refers to your general letter of the 14th regarding publication of Government quotations.

The list you sent is correct except the third block, Quotation No. 3. This should be between Fort Riley, Kansas to Sioux Ordnance Works and not from and to. You should also show Nielsen & Peterson, Inc. as concurring carrier, I believe we have already signed the power of attorney necessary to issue the bureau tariff but if not, please advise. You did not enclose any forms with your letter.

Yours very truly,
RISS & COMPANY, INC.

D. C. Stone
Secretary and Director of Traffic

CS:bb

Counterclaim Document No. 17

MIDDLEWEST MOTOR FREIGHT BUREAU

Kansas City 6, Missouri

August 12, 1949

File: Government Quotations

TO ALL MEMBERS:

Under date of April 14, 1949, we sent to motor carriers having Government Quotations on file, copies of their Quotations, advising them that unless objections were received on or before April 25, 1949 that other motor carriers would be given an opportunity to participate in the Government Rate Sheet being issued by this association. A few motor carriers have advised they desired cancellation of certain quotations that were issued during the war period and such quotations on file and not reproduced on the attached list of quotations for intraterritorial application within Middlewest territory, will be cancelled upon the issuance of this association's Government Rate Sheet.

The attached list of quotations, is being publicized in accordance with previous notices and publication will be made for the account of the quoting carriers and for the account of any other motor carrier who so instructs us and who has executed a Government Quotation Power of Attorney in favor of this association. Several motor carriers having quotations on file have not as yet executed a Government Quotation Power of Attorney in favor of this association. Information as to those not having submitted a Power of Attorney is indicated on the attached list. In these cases, the quotation cannot be published for those carriers and if no other motor carrier requests to meet their competition, the quotation will be eliminated from the Government Rate Sheet. Therefore, interested parties who have not executed a Power of Attorney, should do so immediately.

Counterclaim Document No. 17
Page two

If any carrier desires to meet the quotation of another carrier, please let us know immediately, referring to the quotation you are meeting, by item number. If single line service is involved, name the origin and destination points you have authority to serve. If Joint line service is involved, name the origin point, interchange point, and carrier with whom joint arrangements will be made, and destination points. Joint line service will also require concurrence from the connecting carrier and information as to whether or not interchange of equipment is contemplated.

It is important that we have a reply to this communication not later than Friday, August 19, 1949, if it is desired to participate in the initial publication.

Yours very truly,

J. D. Lawson
Issuing Officer

DJ:llh

(1192)

Counterclaim Document No. 18

August 16, 1949

Mr. J. D. Lawson
Middlewest Motor Freight Bureau
P. O. Drawer No. 2298
Kansas City 13, Missouri

[Item 300 - out)	Neilson
Item 340 - out)	Peterson
Item 350 - out	Hall Mo Fr
Item 360 - do	do
Item 440 - do	do

Re: Government Rate Sheet

Dear Mr. Lawson

Replying to your circular letter of August 15, I find that we have executed Government Quotation Power of Attorney form, our No. 2 dated January 15, 1948.

We are checking the listing contained in the statement attached to your circular of August 12 and will inform you of any errors or omissions.

Yours very truly,

M. P. Hester
General Traffic Manager

MPH:hc

Counterclaim Document No. 19

MIDDLEWEST MOTOR FREIGHT BUREAU
Kansas City 6, Mo.

October 13, 1949

File: Tariff No. 303

**TO CHIEF TRAFFIC OFFICIAL
of PARTICIPATING CARRIERS
in MMFB TARIFFS**

Gentlemen:

This association has compiled manuscript for a Government Rate Quotation tariff. The original plans for this tariff called for publication only of Midwest intraterritorial rates. However, due to a number of quotations having both inter- and intra-territorial application, it is now necessary that the original manuscript be expanded to include those quotations having inter-territorial application.

The attached summary of quotations is now publicized for the benefit of all carriers participating in tariffs of this association. These will be published for the named carriers and for any other carrier which so instructs us and which has executed a Government Quotation Power of Attorney in favor of this association. Several motor carriers, having filed individual quotations, have not as yet executed a power of attorney authorizing publication for their account. In such instances, the quotations cannot be published for those carriers and if no other carrier desires to meet this competition, the rate will be omitted from the tariff. Government Quotation Power of Attorney forms may be obtained from this office, upon request.

Counterclaim Document NO. 19
Page two

Any carrier which desires to meet the quotation of another carrier should let us know immediately, referring to the quotation by item number. When single line service is involved, name the origin and destination points from and to which you desire the rate to apply. When joint line service is involved, name the origin point, interchange point, connecting carrier, and destination point. Joint line service will also require concurrence from the connecting carrier, and information as to whether or not interchange of equipment is contemplated.

It is important that we have a reply to this communication not later than Friday, October 21, 1949, if it is desired to participate in the initial publication.

Yours very truly,

J.D. Lawson
Issuing Officer

DJ:RMG

(1540)

Counterclaim Document No. 20

January 6, 1950

Middlewest Motor Freight Bureau
P. O. Drawer 2298
Kansas City, Missouri

Gentlemen:

I have made a complete analysis of your Tariff No. 303, Government Quotations, and I am suggesting some changes which may be beneficial to all concerned.

In Item 110, Gillette, Lee Way and Southern Express have 65%, minimum 20,000 on ammunition and explosives. If you will glance through the Tariff you will find that in practically all cases the basis is 65%, 50,000. We have had no difficulty with the 50,000 pounds minimum because it was published to meet the rail quotation and there is in practically every case, large tonnage to be moved so that the 65% basis with the actual weight is protected.

In Item 120, Watson, single line and Watson - Lee Way have the same basis. You are doubtlessly aware that the normal rating for explosives with a 20,000 pound minimum is 75% of first.

I don't know what the Bureau may want to do about this but in the interest of conserving carrier revenue perhaps you might want to suggest to those lines that Items 110 and 120 be corrected to the standard basis.

Another point in connection with the 65%, 50,000 basis; I refer you to Items 195, 200, 210, 220, 230, 240, 250, 260, 270, 280, 290, 300, 310, 320, 330 and 340. In the Dallas Bureau quotation Tariff they publish the 65%, 50,000 and make it apply via all carriers party to the issue. I wonder why all of these items could not properly be consolidated into one.

Counterclaim Document No: 20
Page two

Item 330 should be cancelled as the quotation expired December 31, 1949. Please add Riss, single line in Item 380. Item 390, add Riss, single line. Item 430. This is a freight, all kinds rate published by Watson between the Denver area and Kansas City. The first class rate between these points is \$3.08 and the quotation of these rates for the Government seems rather ridiculous.

[Illegible] , \$1.20 is approximately 39% of first and the revenue is about [illegible] truck mile. The 74¢ rate is about 24% of first and yields about [illegible] truck mile. I do not know whether the Bureau will want to correspond [illegible] Watson about this item but I am bringing it to your attention.

When you get around to it possibly a meeting of the carriers, party to 303, might bring about some desirable changes.

Yours truly,

D. C. Stone
Director of Traffic

DCS:hc

Counterclaim Document No. 21

MIDDLE ATLANTIC STATES MOTOR CARRIER CONFERENCE, INC.

Washington 7, D. C.

Don

September 20, 1949

Refer to File No. G-188B

Mr. C. H. Rhodebeck, Vice President
Riss & Company, Inc.
17-21 Florence St.
Jersey City 4, New Jersey

Dear Mr. Rhodebeck:

It has come to our attention that your company has submitted Government Quotation No. 2-A, dated June 30, 1949, covering ratings of Class 65, minimum 50,000 pounds, and Class 75, minimum 20,000 pounds, on explosives, etc., also Ordnance Stores.

Your company participates in our Government Rate Sheet No. 107, which names rating of Class 65, minimum 50,000 pounds, on many of the commodities named in your Quotation 2-A and to that extent this quotation is a duplication. However, Government Rate Sheet No. 107 names no 20,000 pound rating and in this respect this quotation gives your company an advantage over competitors.

I think this is something which should be brought up for discussion before the General Rate Committee but before doing so I am wondering if you will let me have some information as to the basis and reason for the enlargement of the list and the reduced rating on the low minimum, or if you do not have this information available yourself, have your home office supply it to us.

Very truly yours,

Middle Atlantic States Motor Carrier Conf., Inc.
/s/ C.M. Carter
Assistant General Manager

CMC:emc

Counterclaim Document No. 22

October 12, 1949

Mr. C. M. Carter
Asst. Gen. Manager
Middle Atlantic States Motor Carrier Conference, Inc.
2111 E Street, N.W.
Washington 7, D. C.

Dear Mr. Carter:

Mr. Rhodebeck has referred to me your letter of September 20, File G-188-B regarding Government Quotation No. 2-A covering ratings of Class 65, minimum 50,000 pounds and Class 75, minimum 20,000 pounds on explosives and Ordnance Stores.

Quotation 2-A is a system-wide Quotation and was necessary because most of the Bureaus do not publish Government Quotations. The Class 75 rating with a minimum of 20,000 pounds is in fact not operative except in rare cases. The Class 75 would apply only to isolated movements and I do not believe we have had any in your territory. In addition to the facts stated, the Middlewest Tariffs provide a Column 75, minimum 20,000 pounds on Explosives which of course will apply on both Government and Commercial movements. If there is any objection on your part to the Column 75, minimum 20,000 pounds, I don't believe it would create any disturbance whatever if we restricted it not to apply in M.A.S. territory.

I shall appreciate your further advice.

Yours truly,

D. C. Stone
Director of Traffic

DCS:ml

cc: Mr. C.H. Rhodebeck

Counterclaim Document No. 23

MIDDLE ATLANTIC STATES MOTOR CARRIER CONFERENCE, INC.

Washington 7, D. C.

October 18, 1949

Mr. D. C. Stone, Director of Traffic
Riss & Company, Inc.
9th & Burlington
North Kansas City 16, Missouri

Refer to File No. G-188-B

Dear Mr. Stone:

Thanks very much for your letter October 12 regarding your
Government Quotation No. 2-A.

We recognize that your operations are wide spread and that
from the standpoint of consistency there is much argument in favor of
applying a uniform basis of rates. You will remember that at one time
the Section 22 situation on Army traffic was becoming very involved but
that through the cooperation of the Army and Middle Atlantic Conference
Lines, including our mutual friend, Cal Rhodebeck, what promised to be
a very unfortunate condition was resolved into a very satisfactory one for
all concerned. This arrangement has continued as an outstanding example
of what can be done and we are frankly reluctant to see any development
which might cause it to deteriorate.

Apparently the Middle Atlantic situation is one which could be
made uniform without causing you undue difficulty and in view of your will-
ingness to do so, we believe it would be in the interest of all concerned if
you will restrict this sheet to make it nonapplicable between points in Middle
Atlantic Territory, referring to Middle Atlantic Government Rate Sheet No.
107.

Very truly yours,

C.M. Carter,
Asst. General Manager

Dictated October 17

cc: Mr. C.H. Rhodebeck
Riss & Co., Inc.
New York 7, New York

Counterclaim Document No. 24

November 5, 1949

Mr. C. M. Carter
Asst. General Manager
Middle Atlantic States Motor
Carrier Conference, Inc.
2111 E Street, N. W.
Washington 7, D. C.

Dear Mr. Carter:

This refers to your letter of October 18, 1949, File G-188-B.

We have reissued our Government Quotation 2-A and enclose herewith a copy of Quotation 2-B.

You will note we have inserted Note 3 in connection with the 75% rating and have restricted it so as not to apply in Middle Atlantic Territory.

Yours very truly,

D. C. Stone
Director of Traffic

DCS:hc

cc: Mr. C. H. Rhodebeck
Riss & Company, Inc.
New York, New York

Counterclaim Document No. 25

CENTRAL STATES MOTOR FREIGHT BUREAU, INC.
Chicago 2, Illinois

January 30, 1950

Refer to our Docket 12653

To All Carriers Participating in CSMFB Inc. Tariffs:

The above docket covers a proposal approved by the U. S. Army to publish, for general application throughout Central Territory, a fourth class exception rating to apply on:

Firearms or parts, NOI, in barrels or boxes;

Guns, Machine, or Parts, NOI, for use of small arms
ammunition, in boxes.

Truckload minimum weight 25,000 pounds.

The traffic is said to involve several thousands of tons to be shipped within the next two years from and to a number of points, with weight densities ranging from 20 pounds to 68.2 pounds per cubic foot.

The matter was first presented to our Board of Directors and CFA-Central Committee at which time an army officer described the movement and urged adoption of the proposal. The carrier reaction was then very favorable but under our procedure it was found necessary to present the matter formally through the medium of a docket proposal.

At our public hearing of that proposal we found almost unanimous carrier support as to the fourth class rating but nearly all carriers expressed the opinion that the proposed basis should be adopted as a Section 22 quotation to the government rather than to risk other reductions through publication in a tariff containing commercial rates. Moreover, carriers were of the opinion that there is little if any commercial movement in truckload quantities.

Counterclaim Document No. 25
Page two

Other carriers thought the minimum weight should be reduced to 20,000 pounds in order to avoid conflict with existing weight laws.

We are in general agreement with these observations and believe adoption upon Section 22 quotation of 4th class, 20,000 pounds minimum, under U. S. Government Bills of Lading, shippers load and count with consignee unloading, would be preferable.

We have concluded to recommend adoption upon that basis and to publish a government rate sheet to apply for account of all carriers who have furnished us with a signed special Power of Attorney form, except that the quotation will not be made for account of any carrier who may instruct us on or before February 10, 1950 not to do so.

If you did not send us the Power of Attorney form which the Board of Directors found necessary two or three years ago, we shall be glad to send you a supply.

CENTRAL STATES MOTOR FREIGHT BUREAU, INC.

By: C. L. Lawson, Chairman
Standing Rate Committee

Counterclaim Document No. 26
Page one

RISS & COMPANY, INC.
North Kansas City 16, Missouri

August 7, 1950

Mr. K. Tracy Power
General Manager
Rocky Mountain Motor Tariff Bureau, Inc.
1600 Logan Street
Denver 5, Colorado

Dear Mr. Power:

I am in receipt of a copy of a letter dated Washington, August 1st written to you by Lt. Henn of the Navy Department stating that Interstate Motor Lines have issued Section 22 Quotation No. 29 on freight, all kinds from Clearfield, Utah to Letterkenny, Pennsylvania, an arsenal about thirty-four miles southwest of Mechanicsburg. The quotation is a rate of \$3.55 per hundred, minimum weight 28,000 pounds. The rate in your Quotation No. 9 which became effective August 30, 1949 is \$3.76, minimum weight 20,000 pounds.

I thought it was understood by all concerned that all such quotations would be made through your bureau as specifically requested by the Chief of Transportation's Office. There may be emergencies where individual lines make quotations pending publication through your bureau. However the letter from Lt. Henn is the first information I have had regarding the reduction in the Letterkenny rate.

There appears to be one or two things we can do namely withdraw entirely from the bureau quotations and publish our own with the concurrence of connecting carriers or cooperate with all carriers concerned to the end that the quotations may be on the proper basis and that the rates may be uniform via all competing lines. I am a bit surprised that the carriers making this quotation

Counterclaim Document No. 26
Page two

would do so without the knowledge of other carriers because it is certainly a fact that this company and others can employ the same methods and bring the whole situation into a state of chaos. The net result of course will be loss of revenue to all concerned and the handling of important and valuable military freight at lower rates. It seems to me that the demand for expedited service in every instance might warrant even higher rates than now generally in effect.

It is my suggestion that all carriers interested in this particular traffic reduce the Letterkenny rate to \$3.50 because if we are going to have a rate war for Government freight, let's start it now.

Yours truly,

D. C. Stone
Vice President

DCS:hc

cc: Interstate Motor Lines
245 West 3rd South St.
Salt Lake City 1, Utah

Illinois-California Express, Inc.
2950 Blake Street
Denver 17, Colorado

Eastern Motor Express, Inc.
128 Cherry
Terre Haute, Indiana

...
Pacific Intermountain Express
299 Adeline Street
P. O. Box 958
Oakland 20, California

Gallagher Transfer & Storage Co.
2424 Arapahoe Street
Denver, Colorado

Mr. M. P. Hester
Vice President - Traffic
Riss & Company, Inc.
North Kansas City, Missouri

Counterclaim Document No. 27

INTERSTATE MOTOR LINES, INC.

Helen
See me pls.
S 8/14

Salt Lake City, Utah

August 9, 1950

Mr. Don C. Stone
Riss & Company, Inc.
Ninth & Burlington
No. Kansas City 16, Mo.

Dear Sir:

We have your letter of the 7th, and we can well understand that you would be disturbed if we had recently issued a quotation of \$3.55 from Clearfield, Utah to Letterkenny, Pennsylvania.

However, the quotation to which you refer is not a recent one. It was originally issued with the Liberty Motor Freight Lines and Horn's Motor Express on September 1, 1949. The rate in that quotation, however, was \$3.60, minimum 20,000 pounds.

After considerable negotiation, a quotation was issued with the Illinois-California Express with a minimum of 28,000 pounds at a rate of \$3.55 which was not out of line with the previously issued quotation. The quotation with Illinois-California Express was issued February 15, 1950, effective January 15th.

We also have your letter in our file addressed to your Mr. Strohfield by Clyde Smyth at Denver dated April 19, 1949 in which he mentions that the Illinois-California Express was figuring on putting in a quotation Section 22 to Chambersburg, Pennsylvania, at which point the Letterkenny Depot is located.

We well agree with you that all quotations should be issued with the bureau, and I believe if you will check, you will find this company has always wholeheartedly been in favor of it.

Counterclaim Document No. 27
Page two

We have had several carriers issue filed-quite-over-night quotations using our name as the originating carrier and without obtaining our signature, and we have written such carriers insisting these quotations be withdrawn and placed with the bureau.

We also call your attention to the fact that at the present time there is in effect with your company applying between Utah depots and some California points and the eastern destinations a number of quotations which are not on file through the bureau. They have been issued by our joint companies on the premise that they were necessary at the time, and apparently it was not possible to wait for a bureau issue and the rates themselves are not in bureau issues.

We are sure that you do not mean what you say when you advise the bureau the \$3.50 quotation, especially in view of the fact the quotation you mention has been in effect for a long period of time, apparently to the detriment of no one, and for your advice we will be more than pleased to see that the quotation is placed in a bureau issue whenever you and the other carriers are willing to also get rid of their individual quotations.

We have on one occasion furnished the bureau a list of the quotations we had in effect. However, whether this one was mentioned in to,, we do not remember, but we will be pleased to again issue such a list and place it in the hands of the bureau for their publication, but we also expect all other carriers to do likewise.

Counterclaim Document No. 27
Page three

Yours truly,

INTERSTATE MOTOR LINES, INC.

E. L. Morris, Traffic Manager

ELM:bh

cc: Mr. K. Tracy Power
Rocky Mountain Motor Tariff Bureau
1600 Logan Street
Denver 5, Colorado

Illinois-California Express
2950 Blake Street
Denver 17, Colorado

Eastern Motor Express, Inc.
128 Cherry
Terre Haute, Indiana

Mr. M. P. Hester
Riss & Company
North Kansas City, Mo.

Pacific Intermountain Ex.
299 Adeline Street
Oakland, California

Gallagher Transfer & Storage
2424 Araphoa Street
Denver, Colorado

Counterclaim Document No. 28

INTERSTATE MOTOR LINES, INC.
Salt Lake City 1, Utah

Helen
prepare pls
S 1/9

January 4th, 1950

Mr. Don C. Stone
Riss & Company
North Kansas City, Missouri

Dear Mr. Stone:

We have been informed that there is in effect a Section 22 quotation jointly with your company and the Gallagher Transfer & Storage Company applying between Detroit, Michigan and Cleveland, Ohio, and Clearfield, Utah, the Detroit rate being \$3.27, Min. 20,000 lbs. and the Cleveland rate being \$3.32 per cwt., Min. 20,000 lbs.

We are quite concerned that we had to learn of this quotation being published by your company in connection with a competitor of ours and our not being advised. If you have no objection will you prepare a joint quotation in connection with us, sending to us for signature so that we also can participate in this prospective movement.

Incidentally we would be glad to issue the quotation and send it to you for signature but do not have a copy and would like it to appear exactly as issued with other carriers.

Yours truly,

INTERSTATE MOTOR LINES, INC.

/s/ E. L. Morris, Traffic Manager

CC: Mr. E. E. Strohfield
Riss & Company
Oklahoma City, Oklahoma

Counterclaim Document No. 29

June 3, 1950

Middlewest Motor Freight Bureau
Post Office Drawer No. 2298
Kansas City, Missouri

Attention: Mr. Don Johnson

Dear Sir:

I have been in correspondence with the lines party to Item 110-C, Quotation Tariff 303. I did not correspond with all of them.

I have responses from two or three of them who seem agreeable to increase the minimum weight shown in the Item to 50,000 pounds. I pointed out that the rails have a standing quotation of 65% of first, minimum weight 50,000 pounds and that we have never departed from that rule in handling millions of pounds of government explosives.

We have also carried for several years 75% of first class on 20,000 and I think that basis is published in one of your tariffs for application in certain WTL territory.

I think the quotation is dangerous and should be corrected to 75% on 20,000 pounds and 65% on 50,000 pounds. Some of the carriers may use single axle trailers and that fact would not change the picture at all because the government, with isolated exceptions, has several hundred thousand pounds to move, consequently always more than 50,000 pounds to be transported. The carriers with single axel trailers can very well have the bills of lading show the 50,000 pounds or more and transport it in as many vehicles as may be required.

Counterclaim Document No. 29
Page two

I am writing you because I am not in a position to suggest to all of these carriers that the Item be corrected but it is dangerous because if the rails start reducing their basis, this government freight will no longer be attractive.

I am wondering if you would arrange to address the carriers shown in Item 110-C setting forth the suggestions outlined above in order to see if we can't have a uniform 65% at 50,000 pounds throughout this tariff.

Thanking you for your cooperation, I am

Yours truly,

D. C. Stone
Vice-President

DCS:he

Counterclaim Document No. 30

SOUTHERN EXPRESS INC.

June 25, 1951

Mr. Glenn H. Smith
Riss & Company
Ninth & Burlington
N. Kansas City 16, Mo.

Dear Mr. Smith:

We refer to your letter of June 20, 1951, calling our attention to your Joint U. S. Government Quotation No. 73, Southern Express No. 36, which covers a movement of ammunition and explosives from Pueblo Ordnance Works at Avondale, Colorado to Camp Stanley, Leon Springs, and Houston, Texas.

We are perfectly agreeable to your suggestion to cancel the joint quotation which is now on file under our No. 36, your No. 73 and join other carriers in the items published in Tariff 303-B, covering these movements from Avondale to Camp Stanley, Texas.

If you will prepare cancellation and forward the required number of copies to us for our signature, we will be pleased to sign and return to you for your transmitting to the Office of the Chief of Transportation at Washington, D. C. Upon receipt of such cancellation, we will immediately furnish you with our letter of concurrence, participating Southern Express and Riss & Company in the provisions of the items published in Tariff 303-B covering these movements.

Sincerely yours,

SOUTHERN EXPRESS, INC.

S. L. Holloway
Vice Pres. & Traffic Mgr.

SLH/pn

Counterclaim Document No. 31

INTER-OFFICE CORRESPONDENCE

M. P. H.

RISS & COMPANY, INC.

You are correct
unless there is

Name R. B. Riss

Date March 17, 1952

a large
profit
margin
even at
the lower
rate.

Terminal K. C., Mo.

Terminal K. C. Mo.

Subject Quotation No. 14-F-51

This quotation covers a movement of general commodities between Great Lakes, Illinois and Chicago, Illinois on the one hand and Eastern points served by the various carriers on the other hand. Mr. Rhodebeck has been attempting for some time to get us to reduce our rates to the lowest level in effect.

I have been trying to get someone, Mr. Rhodebeck or Mr. McLaughlin, to furnish us with a statement of the present competing rates and the names of the carriers filing the quotation in order that a conference may be called and get an upward adjustment on these rates. I do not believe in reducing our revenue if we can get the carrier to come up with his rate.

Mr. Rhodebeck can obtain from the Navy Department a statement of the present rates between Great Lakes, Illinois on the one hand and Eastern points served by Riss and Company on the other and the name of the carrier publishing the rate and the minimum weight applicable thereto. With this information the conference can be called to discuss the situation. I am quite sure that all participating carriers in this traffic are concerned with increased revenue.

Why, then, should we issue a quotation on the bottom rates in effect today?

MPH/bc

M. P. Hester
A. J. T.

Received
Mar. 21, 1952
Traffic Dept.
Riss & Co.

cc: C. H. Rhodebeck, New York

Counterclaim Document No. 32

AIR MAIL
SPECIAL DELIVERY

March 17, 1952

Mr. E. H. Russell, Gen. Manager
Eastern Central Motor Carriers Assn.
207 East Tallmadge Avenue
Akron 10, Ohio

Subject: Section 22 Quotations -
Traffic to or from Great Lakes, Ill.

Dear Mr. Russell:

Pressure is being brought on me to meet the lowest level of rates in effect in the various quotations between Great Lakes, Illinois and Eastern points. It is my belief that this is unnecessary. I therefore, suggest that you request the carriers in attendance at the meeting in Cleveland to bring with them to the next General Committee meeting their Section 22 quotation involving Great Lakes, Illinois with the view to increase the rates in these quotations.

It might be well if each carrier would submit to you a copy of his latest quotation and that you tabulate a statement showing the rates between the various points with the minimum weights applicable thereto for carrier A, carrier B, carrier C, etc. With this information available we can quickly determine at the meeting what is necessary to be done in order to conserve our revenue.

Of course, the request for this information should be kept confidential for various reasons.

Very truly yours,

MPH/bc

M. P. Hester
Vice President - Traffic

Paper

Counterclaim Document No. 33

INTER-OFFICE CORRESPONDENCE

RISS & COMPANY, INC.

To: Mr. A. J. Tait

Date: May 16, 1952

Terminal: Kansas City

Terminal: Oklahoma City

Subject: Reference Item 101-RM 43-A

Dear Al:

Tinkerfield gives us very few loads to the West Coast on the \$3.28 per cwt - 12,000 lbs. minimum. I know Time - Southwestern and Interstate wants to change rate as you suggested. Therefore, will you increase accordingly?

Time - Southwestern Terminal Manager says - last Rocky Mountain rate meeting that they decided on \$3.47 cwt - 25,000 lbs. minimum per truck used.

OK /s/ Ed
Yours truly,

E. E. Strohfield

EES:fs

Received
May 19, 1952
Traffic Dept.
Riss & Co.

Counterclaim Document No. 34

Address Reply to:

P. O. Box 5689
Dallas, Texas

May 21, 1952

AIR MAIL

Mr. A. J. Tait, G.T.M.
Riss & Company, Inc.
9th & Burlington
N. Kansas City, Missouri

No

214 52

Dear Mr. Tait:

We refer to your letter of May 16th to Mr. Peck concerning your Tender No. 216-52 quoting a rate of \$1.92 on explosives between DeSoto, Kansas and W.A.D., Shoemaker, Arkansas, routing Riss-Strickland-Herrin.

We have notified the Navy that we will protect the rate of \$1.92 but for the life of me I don't know why. The rail rate on this movement is 228.96¢ plus 9% increase which would put the rate up to around \$2.42, fifty cents higher than the rate you are quoting. We do know that the rate is influenced by whatever Tri-State Warehousing and Distributing Company does, but we have information from a reliable source that they have issued a supplement to their individual tariff which will bring about a rate of \$2.09 effective about May 25th. It seems very inconsistent to name a rate so far below rail that it is entirely out of reason. I think the carriers involved should get together and do something about either meeting the rail by having Tri-State increase theirs to that amount or at least to meet what Tri-State will have at the time their new supplement goes into effect which is \$2.09.

Counterclaim Document No. 34
Page two

The Navy requested the rail lines to publish \$1.92 but they refused and we can understand the reason why. It has gotten to a point where the Government authorities are trying to work trucks against rail and beat down the rates to a point where they are unprofitable and as long as we sit still and let them rule our roost, we are going to be confronted with this situation.

Not at
K.C. . I will be in Kansas City May 1st and 22nd attending the Middle-west Bureau meeting, also will be at Denver on May 26th and I would like to talk with you or Mr. Hester in regard to this matter.

Yours very truly,

T. M. Strickland
Transportation Co., Inc.

cc: Mr. C.P. Peck, Herrin Transportation Co., Houston, Texas

Counterclaim Document No. 35

No. 253 - 7 - 28 - 52

Long Distance Phone

Ward Thickett - Omaha, Nebr.

at Wash. D. C. Willard Hotel

said he had increased sec. 22 tenders 6% - was afraid of Navajo -
but Navajo has filed - advised also he was putting his tenders in M West
303-B as fast as possible.

Received

Counterclaim Document No. 36

INTERSTATE MOTOR LINES, INC.

235 West Third South
Salt Lake City, Utah

August 13, 1952

Mr. A.J. Tait
General Traffic Manager
Riss & Company, Inc.
Ninth & Burlington
N. Kansas City 16, Mo.

Dear Al:

This is in reply to your letter of August 8 regarding Interstate's increase of all quotes and furnishing these quotes to the Bureau for publication in Quote Tariffs 43-A and 1-C.

Al, I owe you an apology for the manner in which this was handled. At the last meeting of the Transcontinental Rate Committee it was agreed that all carriers would increase their quotations the full six per cent, and after increasing them would submit them to the Bureau for publication. Due to vacations and the press of other matters, we found the August 1 deadline rapidly rolling around, and we had not accomplished anything toward getting our quotations in order; therefore, Emmett Morris and myself pulled all our individual quotations, signed our signatures as well as the connecting carriers' signatures, had the copies run off and forwarded to the Department of Army and so forth, advising of the increase, then forwarded to the Bureau.

I have written the Bureau to show the rate of \$4.13 on Tender 189-52 rather than \$3.90 as was shown in your letter to the Bureau.

Please accept my apology for handling this matter as we did, but it was only due to the press of time and the fact that Hester had agreed to the increases that we handled this in such a manner.

Cordially yours,

INTERSTATE MOTOR LINES, INC.
J.F. Simmons, Asst. Traffic Mgr.

JFS:CAP

Counterclaim Document No. 37

No. 575 - 579 -- 9-29-52

Called E. C. Funk, RMTB

Denver - relative item 285-43A - routing via Robinson (R217) -

Keystone (K90) - Riss (R185) ImL (I125) - Columbia, Miss. to Hill A.F.

Base Ogden (Marginal Note: Not published - RMMTB - 43B. Wrote EES 10-14-52). Funk to ntify Air Force when ImL concurrence recd. Dis-

cussed Watson - Ringsby trucks in RMTB-43-B. Said all except two of

Watson specific commodity tenders ready to publish - (1) postcards -

Wash. D. C. - S.F. - Los A. rate 476 - 30 m. (2) Cot. Jumpers -

Adamsville - Tenn. - Clearfield Ut. rate 2-25 @ 20 m.

D Chgo not include tenders. Ft. all kinds. Buckley Camp Carson to Chgo

Crosby - Watson says not increase for Watson until knows what DC going to do

Ringsby and Navajo tenders not in original issue of 43B, Navajo received too late to include. Ringsby not received as of today.

No. 628 -- 10-13-52

Called Friedland - Ringsby Denver (Ward Thickett) - Sic Friedland - sec 22 tenders not in 43B (See 634) Sheehan Wash. D. C. Check - Watson what day on sec 22 tenders

Received

Counterclaim Document No. 38

TIME INC.
P. O. Box 1120
Lubbock, Texas

November 28, 1952

Mr. A. J. Tait, General Traffic Mgr.
Riss and Company, Inc.
Riss Building
Ninth & Burlington Streets
Kansas City 16, Missouri

Dear Al:

I was very sorry to hear of Hesters retirement, but on the other hand I was glad that you have stepped into his shoes. Of course realize that you have a big job to do on your hands and I know that you are willing and able to do it. I wish to congratulate you on your promotion.

I am writing you in reference to your letter of November 21, regarding Riss and Companys Tender No. 286-52, applying on freight of all kinds to Shelby, Ohio to Maywood, California. At one of our Denver meetings of the Rocky Mountain Tariff Bureau, three or four months ago when M. P. was there, it was agreed by all concerned that all this quotations would be given to the Bureau to publish.

I was just wondering if after we have the individual quotation signed if we should not send a copy to the Bureau and have them republish it, in order to keep our promise to them and the other carriers. I would like to learn your ideas regarding this policy.

Very truly yours,

/s/ George B. Graff

Traffic Manager

mh

Counterclaim Document No. 39

December 1, 1952

Mr. George B. Graff, GenTraffic Mgr.
T.I.M.E., Inc.
P. O. Box 1120
Lubbock, Texas

286 52

Dear George:

Thank you for your letter of November 28, 1952 concerning Tender No. 286-52. The origin carrier does not participate in Rocky Mountain issues and for that reason, it was necessary to issue a specific quote.

We have asked the Roethlisberger Transfer Company if he plans to participate in Rocky Mountain issues.

Your idea to send the Bureau a copy of Tender No. 266-52 is good and this will be done.

It is our policy to publish, through the Bureau, all applicable tenders, but in cases of the kind here concerned, I do not see how we may handle other than by an individual quote with a copy to the Bureau. We are reluctant to refuse to make a tender with a carrier who will or does not participate in Rocky Mountain issues.

Somehow, somewhere, you have been misinformed as to my taking Mr. Hester's place. Mr. J.K. Newbold, Jr., formerly Regional Sales Manager, Riss & Company, Inc., New York was appointed Director of Traffic and head of the department. Your very kind expression is none the less appreciated.

Best regards.

Very truly yours,

RISS & COMPANY, INC.

A.J. Tait
General Traffic Manager

AJT:es

Counterclaim Document No. 40

December 9, 1952

AIR MAIL

Mr. J. D. Hughett, Agent
Southwestern Motor Freight Bureau, Inc.
4112 San Jacinto Street
Dallas, Texas

Dear Sir:

Will you kindly advise the reason for the publication of Item 129,
Supplement 14 to your Tariff 1000-I, as reissued in Supplement 15?

It is noted that the rate of \$2.09 is less than 65 per cent of the
applicable first class motor carrier rate.

Thank you.

Very truly yours,

RISS & COMPANY, INC.

A. J. Tait
General Traffic Manager

AJT:as

bcc: Mr. Larry Quinn - Building

Counterclaim Document No. 41

SOUTHWESTERN MOTOR FREIGHT BUREAU, INC.
Dallas 4, Texas

Received

December 15, 1952

Mr. A. J. Tait
Riss & Company, Inc.
15 W. 10th Street
Kansas City, Mo.

In reply refer to File G-1

This will acknowledge your letter of December 9th, in which you inquire as to the reason for the \$2.09 rate as published in Item 129 of Tariff 1000-I.

A participating carrier with proper concurrence advised us on November 13th he wired a tender to the Department of Defense offering this rate and requested us to make publication in Tariff 1000.

It appears to us these rates are lower than necessary but of course we always comply with a request from the carriers.

Yours very truly,

/s/ H. G. Thompson

HGT:MD

NAD McAlester, Okla.

to

POD - Avondale, Colo.

65% of 1st 2.64
2.09

55

Counterclaim Document No.42

December 18, 1952

AIR MAIL

Mr. H. C. Thompson
Southwestern Motor Freight Bureau, Inc.
4112 San Jacinto
Dallas 4, Texas

Reply given L. Quinn
1-7-53. He to advise
future procedure.

A. J. T.

Dear Mr. Thompson:

Please be referred to your letter of December 15, File G-1,
rate of \$2.09, Item 129, Tariff 1000-I, explosives, McAlester, Oklahoma
to Pueblo Ordnance Depot.

Will you advise the carrier proposing this rate and also tell us
if it is your procedure to publish rates for all carriers parties to the 1000-I,
without notice, any tenders filed with the Government when requested to do
so? If such is your procedure, it would seem highly irregular to publish
rates for carriers without their knowledge. We had no knowledge of the pub-
lication beforehand of Item 129.

Won't you inform us fully what your procedure is and reasons for
not giving notice of the publication of rates in your Tariff 1000-I?

Thank you.

Very truly yours,

RISS & COMPANY, INC.

A. J. Tait

General Traffic Manager

AJT:as

bcc: Larry Quinn - Kansas City

2-19-53
Paper

Counterclaim Document No. 43

SOUTHWESTERN MOTOR FREIGHT BUREAU, INC.

DALLAS 4, TEXAS

December 31, 1952

Mr. A. J. Tait
General Traffic Manager
Riss & Company
2300 Hickory Street
Dallas 1, Texas

In reply please refer to File G-1
[Don Sable will check to see who filed]
Rec'd 2-9-53

Dear Mr. Tait:

Your letter of December 18, 1952 addressed to Mr. Thompson has come to my desk for further handling, and we note what you have to say and are fully cognizant of the difficulties that arrive in matters of this kind.

It might be well to explain to you, however, that in the beginning when the writer agreed to act as agent for the carriers for the purpose of filing Section 22 Quotations that the question of violation of the anti-trust laws was discussed rather fully and for that reason it was determined that we would publish in Tariff No. 1000 what the carriers requested us to publish and then we would notify the other carriers and any of those who wanted the rates could advise us what their wishes were in the matter. However, it developed that in most instances the quotations were made at the approximate time that the tonnage moved and therefore the carrier who had the rate in effect always got the heavy movement before the others could get the rate in the tariff. In other words, the procedure was that a carrier advised the government that they would protect that rate effective as of a certain date and was instructing us to amend the tariff, so it was determined by the carriers that we would place in effect any quotation that came through for the account of the participating carriers of Tariff 1000 and make it applicable for all carriers and those who did not wish it could immediately notify us that they did not care to protect the rates and it was further agreed that nine times

Received

Counterclaim Document No. 43
Page two

out of ten the carrier would not get any of the business if he did not solicit it.

I recall seeing one from your company recently in which you advised us to make the publication effective as of a certain date and that is the usual procedure for most of the carriers.

The plan as now followed has seemed to us to work better than any other plan and it is our firm conviction that there are more carriers using Tariff 1000 for the purpose for which it was intended than probably in any other territory. In other words, there are less individual quotations within the Southwest we think than probably there are any other place.

After receiving this explanation if you have any further suggestions to offer we will be glad to have them.

Thanking you, we are,

Yours very truly,

J. D. Hughett,
General Manager

JDH:hm

Counterclaim Document No. 44

INTER-OFFICE CORRESPONDENCE

RISS & COMPANY, INC.

To: M. P. Hester

From: Don Sable

Kansas City, Missouri

June 14, 1952 -- Dallas, Texas

Subject Item 325-G, Supplement 27
J.D. Hughett's Tariff 1000-H

Dear Hes:

You will recall our discussing this situation and the desire of Strickland Transportation Co., to have us increase our rate on these commodities. It was my understanding that we were holding up the situation and that the rate would not be increased. It now appears that Mr. Hughett has gone ahead and increased the rate regardless.

I am bringing this to your attention for whatever action you see fit.

/s/ Don Sable (Bg)

DS/bg

Counterclaim Document No. 45

No. 841-842-843-844 12-30-52

Talked with Tracy Power - RMTB Denver concerning filing sec. 22 tenders with Navy and Army. Power was in Wash. D. C. Dec. 18, 1952 and discussed this matter with Comd. Quinlan of Navy. Quinlan wants U.S. Govt. quote 43 B simplified and conflicts removed. Also wants volume min weights applied on explosives. Power said Navy also wants specific quotes on movements of explosives. Blanket quotes result in to much research and checking to determine rates applicable. Power advised Army had no complaints on form or manner of publication of rates in 43 B. It was Power's that that all interested carriers should be in Denver Jan 27-28-29, '52. Advised J. K. Newbold of above. He to consider making trip to Denver last of Jan. 1953.

No. 927 1 - 19 - 53

K. T. Power on sec. 22 meeting -

Called long distance. J. K. Newbold talked to Power relative meetings Denver Jan. 28 & 29th discussion sec 22 tenders

No. 1109 - 1110 3-2-53

Washington, D. C.

Burns - Munitions Carriers Conf. - Quinn Motor Carrier -

Rates - Corrbusher

Hastings over Crane to Quinn at Pittsburgh - NY

Rates - 65% 1 - Local over - transit point

ship via rail vs. Comparison of truck rates vs. rail transit rates.

Quinn to check truck rates and furnish to Burns? ?

No. 1520 7-9-53

CHR in JKN office this am said to send Romulo tenders 74-B-52, 271-52
(Union 114) 274-52 and 371-53 and to have Romulo contact Alvis Layne before
releasing to Burns of munitions carriers conference. So wrote Romulo air
mail spec del date.

No. 1735 9-16-53

as of 9-15-53

Munition carriers conference K. C. Mo.

L. Quinn talked to Burns about Demurrage -

Exclusive use of vehicle - seals used and unbroken

Counterclaim Document No. 47

No. 980 - 1-30-53

JKN advises that there will be a section 22 meeting at Denver Feb. 24, 1953 He expects to attend see 1026 JKN did attend

No. 1026 - 2-11-53

JKN - discussed possible attendance at Denver Feb. 24, 1953 - see 980
sec 22 tenders

Said R.B. Riss directed that I handle matters pertaining to 3 bureaus -
Southern - Niagara & Central and Southern - to be shown in work analysis.

No. 1095 - 2-25-53

(JKN not to attend 3-3-53)

JKN advises - carriers to meet in S Fran 3-5-53 discuss rates on explosives -
Raise to rail level - 65% 1st class. Committee of Carriers concerned to meet.
Riss - IML - Strickland - Ringsby P.I.E. - Garrett - Watson - Navajo to
discuss - P.I.E. - Ryall alternate. C. H. Campbell, T. M. Strickland
Transp. Co. Chmn. of committee

No. 1096 2-26-53

Strickland - Campbell

Dallas, Texas - Long distance call

Meeting 7 man committee - on meeting here 2-27-53. Talked to Newbold
on power to act on rates to be made at S Fran. Meet
K.C. 3-10-53

No. 1098 - 2-26-53

Teletype msg - explo meeting 3-10-53 with Campbell - Strickland to JKN

File in 1000-I manner publish rates to JKN

Yellow Transit published

- 701 -

Counterclaim Document No. 48

1953 Jun 11 AM 8 23

WUX POCATELLO IDA

Received

A.J. TAIT, T.M.

RISS & COMPANY, KSC

YOUR COMPANY ASSESSING 556 RATE EXPLOSIVES BURLINGTON
IOWA UMATILLA ORDNANCE OBSERVE ITEM 285 43-B WE ALSO HAVE
CONCURRED IN 491 RATE WATSON ASHWORTH WILL ENDEAVOR GET
OTHERS UP IF YOU CAN HOLD 556 BASIS GARRETT FREIGHTLINES INC.

C.J. SAMS

Received

Counterclaim Document No. 49

July 7, 1953

File: Govt.

Mr. C. R. Merchants
Mid-Continent Transportation Co.
Oklahoma City, Oklahoma

354 53

Dear Mr. Merchants:

This will confirm our telephone conversation of today regarding the rate to apply on explosives from Joliet, Illinois to Dayline, Ia. You advised that your rate at the present time is \$2.47 per cwt., but that you would take steps immediately to have that rate cancelled out on 60 days' notice, or on September 13.

You will recall that I told you our present rate is \$2.75, which was effective July 1.

Immediately following our conversation I received a call from the Herrin Transportation Company of Houston, Texas asking me to concur with them and Strickland to protect the \$2.47 rate for the next 60 days or until such time as all of the carriers having rights to serve those plants did get together and get their rates up to a common level. We agreed to do this, and have advised the Bureau to publish a rate effective immediately, but to expire on September 13.

There is some talk now about the carriers getting together and raising that rate up to \$3.00, which is 65% of the first-class exception rate. Needless to say, we are not only willing but anxious to get the rate up to \$3.00 if all of the carriers involved agree that it is the basis that should be used. Therefore we would like to have an expression from both of you and Mr. Newbold of Riss & Company as to just what action you will take on the rate to be applicable after September 13. If you do agree that

Counterclaim Document No. 49
Page two

we should go to \$3.00 then we shall also get our tenders in, cancelling the \$2.75 rate and making the \$3.00 rate applicable on and after September 13.

Will you please let me hear from you by return mail, so that we can proceed with our cancellation if we all agree that \$3.00 should be the applicable rate.

Very truly yours,

HAYES FREIGHT LINES, INC.

A. E. Moak

Counterclaim Document No. 49
Page three

July 7, 1953

P.S. Since dictating the above, Riss & Company phoned and advised they would go to \$3.00 per cwt. on both Defense and Dayline on September 13. Therefore we must have your immediate reply.

A.E. M.

cc: Mr. James K. Newbold, Jr.
Riss & Company
Kansas City, Missouri

Mr. O. P. Peck
Herrin Transportation Company
Houston, Texas

Mr. Lallier
Strickland Transportation Co.
Dallas, Texas

Mr. W. F. Kirk
Hayes Freight Lines, Inc.
Springfield, Illinois

Counterclaim Document No. 50

No. 1747-1749 9-18-53

E. E. Strohfield - Okla. City 8:05 a.m.

Pennies - no more to move - Load 9-21-53

(1) Bronze coils - 2 ft. dia. - 6" wide - 192 lbs. each
157 per truck (2) Rough cut pennies unfinished
unstamped in bbls. - 445# per bbl. 60 to a load - No.
more finished pennies to move.

Rates carriers made wholly unreasonable.

Won't pay new rate - P.I.E. contacted - Navajo - D. Chgo.

Tariff rate not competitive - with rail.

Denv. to Phila. (Motor carrier rate) (rail rate)
(check

Min -

Call E. E. S. - go below rail - because of getting together

Counterclaim Document No. 51

UNION FREIGHTWAYS
Omaha, Nebr.

Cancel from
part 3C rate
from Cornhusker
Ordnance Depot
Grand Island,
Neb., to NAD
[illegible]

May 6, 1954

320

No. 543-54

Mr. Jim Reardon
Riss & Company
15 W. 10th Street
Kansas City, Missouri

Dear Mr. Reardon:

We note in the latest release of Digest of Section 22 Quotations, released May 5th, Release No. 42, issued by U. S. Traffic Service, St. Louis, Missouri, on page six is listed a quotation of C. I. Whitten Transfer, Roy Cartage Company and Watson Bros. Transportation Co. between Cornhusker Ordnance Plant, near Grand Island, Nebraska and U. S. Naval Ammunition Depot, Hastings, Nebraska and U. S. Naval Ammunition Depot, near Portsmouth, Virginia showing rate of \$3.03 on 30,000 pounds.

Our quotation in connection with Riss & Company between the specified points, on Grand Island is \$3.20. Bob Hill has discussed this with Watson Bros. and they are of the opinion that the \$3.03 should apply. Therefore our line of thinking is that you should issue a supplement to our quotation to also reflect the \$3.03 rate.

Yours very truly,

UNION FREIGHTWAYS

Riss & Co., Inc.
May 7, 1954

/s/ F. W. Kelsey
Asst. Gen. Traffic Manager

5-7-54

L. Quinn says issue supplement

AJT

Counterclaim Document No. 52

INTER-OFFICE CORRESPONDENCE

RISS & COMPANY, INC.

To: A. J. Tait

May 19, 1954

Terminal Kansas City

Terminal Oklahoma City

Dear Al:

Please find attached original letter from Inland Freight Lines dated May 11th whereas they propose to reduce the rates from \$5.62 per cwt. to \$5.29 per cwt.

Frankly, I have no objections to this reduction. However, I would like to point out that we have concurrences in all of the routes mentioned with Garrett-Riss or Garrett-Rio Grande-Riss, or Interstate-Riss or Time Southwestern-Riss.

In all fairness to the carriers we are now working, it is my suggestion that they also be included in the reduction of rates. Certainly we do not wish to jeopardize our relationships with any of the carriers named above.

E. E. Strohfield

OK

Counterclaim Document No. 53

15 West 10th Street
Kansas City, Missouri

June 28, 1954

SPECIAL DELIVERY

Mr. D. E. Dunlap, Traffic Manager
Watson Bros. Transportation Co.
Government Division
14th & Leavenworth
Omaha, Nebraska

Dear Sir:

Please find enclosed copies of rates to be filed on ammunition
etc. sent to you at our Mr. Reardon's request.

Will you advise as quickly as possible per your understanding
with Mr. Reardon as to the filing of these rates?

Tenders are being held pending your reply.

Very truly yours,

RISS & COMPANY, INC.

A. J. Tait
General Traffic Manager

AJT:jp

RISS & CO. INC. K.C.

223 GA

Counterclaim Document No. 54

[Told M Yench Wash. D.C. to release
these tenders - AJT]

1954 JUL 2 PM

THIS IS WATSON BROS. TRANSPORTATION CO. OMAHA 285

FROM DUNLAP QMG TO JIM REARDON RISS AND CO. KC

7-2-54

4:30

WE ARE IN RECEIPT OF VARIOUS TENDERS FROM AL TAIT WHICH HE HAS FORWARDED TO ME FOR VERIFICATION OF RATES AS PER OUR AGREEMENT, WILL YOU PLEASE ADVISE AL THAT WE HAVE NO INTEREST IN YOUR TENDERS NO 676-54, 675-54, 670-54, 669-54, and 668-54. WE DO HAVE INTEREST IN YOUR TENDERS IN THE RATES SHOWN IN 667-54, 671-54, 672-54, 673-54, 674-54, and 677-54. WE ARE NOT HOWEVER, IN A POSITION TO ESTABLISH RATES BETWEEN ALL POINTS IN THE TENDERS THAT WE ARE INTERESTED IN AT THIS TIME. IF, AND WHEN, WE DO FILE, OUR RATES WILL BE COMPETITIVE WITH THE RATES YOU ARE ESTABLISHING HERE. SUGGEST THAT YOU ADVISE AL TO GO AHEAD AND FILE THESE TENDERS.

END

Counterclaim Document No. 55

WESTERN UNION

Mr. D. E. Dunlap
Watson Bros.
802 S. 14th St.
Omaha, Nebr.

9-3-54

PLS ADVISE RATES AMMUNITION ETC. VOLUMES MINIMUM 30,000 LBS
BETWEEN GRAND ISLAND, NEB. AND RADFORD, VA. AND HOLSTON
ORDNANCE, KINGSFORT, TENN. WHAT IS DATE OF LAST CHECK SHEET
TO YOUR 1000.

RISS & COMPANY, INC. TAIT

2:22 p.m.

KC 223 GA

Counterclaim Document No. 56

THIS IS WATSON BROS. TRANSPORTATION CO. OMAHA 285 9/3/54 425P

GENE DUNLAP ASST. TRAFFIC MGR. OMG TO AL TAIT RISS & CO.

OUR RATE BETWEEN CORNHUSKER ORDNANCE PLANT AND HOLSTON ORDAX
ORDNANCE IS 285 CENTS PER CWT, VOLUME 30,000 LBS. OUR RATE BE-
TWEEN RADFORD ARSENAL AND CORNHUSKER ORDNANCE PLANT IS 285
CENTS PER CWT VOLUME 30,000 LBS. THE LATEST CHECK SHEET TO
WATSON TENDER 1000 IS DATED AUGUST 11, 1954. WE HAVE NOT AS YET
INCORPORATED IN OUR TENDER 1000 RADFORD ARSENAL AND HOLSTON
ORDNANCE . . . END OMG

GA OREND PLS

END. THANK U

Counterclaim Document No. 57

UNION FREIGHTWAYS
Omaha, Nebr.

August 13, 1954

Mr. A. J. Tait, G.T.M
Riss & Company
15 S. 10th Street
Kansas City, Missouri

Received

Dear Mr. Tait:

We refer you to Page 21 of your Tender No. AEF-1, naming the rate between Army Chemical Center, Edgewood, Maryland and Sioux Ordnance Depot, Sidney, Nebraska. You will note the rate on 30,000 lbs. is listed as \$3.46.

Also refer to your rate tender No. 651/54 which specifies a rate between the same two points on 30,000 lbs. of \$3.65. We have checked other carriers for their current rate on this traffic and determine that the present applicable rate to be \$3.65. Since we do not wish to cut a rate, we call this to your attention with the thought you will want to revise page No. 21 of the aforementioned tender to read \$3.65.

We are withholding our signed concurrences to your Tender No. AEF-1 until receipt of advice from you on how you wish to amend the above rate, or your reason for the \$3.46 rate. Your early reply will be appreciated.

Yours very truly,

UNION FREIGHTWAYS

/s/ F. W. Kelsey,
Asst. Gen. Traffic Manager

To Al Tait

Counterclaim Document No. 58

Let me see anything

you prepare

before forwarding.

HAYES FREIGHT LINES, INC.

D.

Springfield, Illinois

Received

November 30, 1954

File: Government

Mr. W. C. Dannevik, Jr., Exec. V.P.

Riss & Company, Inc.

15 W. Tenth Street

Kansas City 6, Missouri

Dear Mr. Dannevik:

We have had numerous conversations regarding the rates which our companies have filed on the movements of explosives between points throughout the United States with a view to increasing those rates.

On my last visit to Kansas City, we discussed this matter along with your Mr. Tait and it was agreed at that time that Mr. Tait would make a list of competitive points and give us your rates so that a comparison could be made with the rates that Hayes Freight Lines has on file, but up to this time nothing has been done in that respect.

I am forwarding to Mr. Tait an up to date copy of our Tender No. 999 which covers the transport of explosives between points in the six states served by Hayes Freight Lines, namely, Kentucky, Tennessee, Missouri, Illinois, Indiana, Ohio and Michigan. It is our suggestion that Mr. Tait immediately go over this tender and if there are any quotations contained therein, between points that can be served by Riss & Company or in which you might be interested on a joint line basis, a list be made showing your rates between these points as compared to the Hayes rates and then we can immediately take steps to increase those rates if it is mutually agreed that they should be increased. This will at least be a start and then later on we may be able to do something about the other traffic in which we are mutually interested.

Counterclaim Document No. 58
Page two

It is obvious, however, that if we expect to do anything about increasing explosive rates in general it is going to take a general meeting of such carriers as Mid-Continent, Tri-State, Watson Bros. and others. If you have any suggestions in this respect we will be more than pleased to hear from you.

We would appreciate it if you would follow up on the suggestions mentioned above and have Mr. Tait give us an early reply.

Very truly yours,

HAYES FREIGHT LINES, INC.

/s/ A. E. Moak
General Traffic Manager

AEM/rk

cc: A.J. Tait, Riss & Co.
Mr. Ratner
Orville Grimes

Counterclaim Document No. 59

1956 Page 66 - Last Item

2-6-56

Long Distance 9:00 a.m. Tracy Power RMMTB Denver, Colo.
Advised carriers are notifying Bureau to increase by 7% all rates
applicable on government traffic. Same as general increases in
Bureau tariffs. JKN also talked to Tracy.

1956 Page 67 - Last Item

2-7-56

JKN talked to Leo Mellem - Dunlap both Watson Bros. on 7% increase
on explosives Riss individual tenders & 43 D. Mellem to call back 2-8-56
as to status of RMMTB quote increase.

Counterclaim Document No. 60

DO NOT: SEND TO THOSE MARKED OUT

NITE LETTER - 2/15/56

DEEM IT INADVISABLE AS OF PRESENT TIME TO INCREASE RATES
PUBLISHED TENDERS 850-55, 851-55, 860-55, 861-55, AEF-2-TC,
AEF-3-ECD, AEF-4-TC and AEF-5-ECD AS PREVIOUSLY PROPOSED
BY WIRE OF JANUARY 23rd. ADVISE BY RETURN WIRE IF YOU CONCUR.
SHOULD THERE BE ANY QUESTIONS CALL ME COLLECT

RISS & COMPANY, INC.

NEWBOLD

[Picked up by W. U. Messenger at about 2:30 P.M.]

[9:40 a.m. Long distance

2-16-56

Fred Petrucci - Ashworth - Salt Lake - Hold for rail action]

[2-17-56 Long Distance

JKN advises Springer - Strickland OK to hold off on increase.]

[2-17-56 Long Distance

JKN discussed with Ryall - PIE]

Counterclaim Document No. 61

1956 Page 70

2-15-56

JKN talked to Tracy Power relative increase rates on explosives. No further action. He is going to Denver tonite to discuss 2-16-56.

Long-Distance - 9:40 a.m.

2-16-56

Fred Petrucci - Ashworth - Salt Lake City called concerning wire 2-15-56 on increase 7% explosives tenders. Agreeable to holding increase in abeyance pending rail rate increase.

2-16-56

Long distance - INCREASE - hold in abeyance - Tenders on expls.

1 - Petrucci	Ashworth	S. Lake - Hold up
2 - Ryall	P.I.E.	Oakland - Apply
3 - "	"	" - Apply
4. - Rudolph	Gateway	LaCrosse, Wisc. apply
5 - (Lustern Gillogly	C.I. Whittier	Chgo. Apply

Gillogly said carriers were in session at Chgo discussing increase. All agreed to same. Watson to increase 1000 Tariff & 43D. Issue 2-25-56 - eff. 3-25-56. Advised JKN & Howard Green on above.

* * *

Newbold

2-17-56

Discussed increasing rates on explosives with JKN on his return today from meeting in Denver 2-16-56. Increase to be taken by Rky Mtn MTB carriers effective probably in April (4-20-56 ?). JKN said to issue sup to Explo tender cancelling application of tariff of Increased Rates Ex Parte 2-196. He discussed with Bob Ryall of PIE who advised me of his agreement thereto. Ryall to send confirmation of this.

Counterclaim Document No. 62

NAVAJO FREIGHT LINES
Denver 9, Colo.

February 23, 1956

Mr. Jim Newbold
Riss and Company, Inc.
15 West Tenth Street
Kansas City 6, Missouri

Received

Dear Mr. Newbold:

This will refer to your telegram of February 15, 1956, stating that you deemed it inadvisable at the present time to increase rates published in your tenders 850-55, 851-55, 861-55, AEF-2-TC, AEF-3-ECD, AEF-4-TC, and AEF-5-EDC.

This letter will serve as concurrence of Navajo Freight Lines to going along with not increasing this rate until such time as the same rates in Rocky Mountain 43D are increased. It was my understanding when you were here in Denver last week that you were going to go along with all these increases, however, you did not want yours in effect before the rest of the competitive carriers had theirs in effect. For this reason, we will certainly go along with the holding up of this increase until such time as U. S. Government Quotation 43D is published on a 7% increase basis.

Very truly yours,

NAVAJO FREIGHT LINES, INC.

/s/ William H. Carpenter
Asst. Gen Traffic Manager

WHC:mbt

Counterclaim Document No. 63

Tender No. 1032-56

CENTRAL FREIGHT LINES, INC.
Waco, Texas

April 21, 1956

Mr. A. J. Tait
General Traffic Manager
Riss and Company
15 West 10th Street
Kansas City, Missouri

[A1 - OK if Thompson publishes
correctly 4-23-56]

Dear Mr. Tait:

We are returning herewith 15 signed copies of Tender No. 1032-56 effective April 10th applicable on coins from Denver, Colorado to Houston and San Antonio, Texas with the following explanation.

It has been our policy for a long time to establish all Section 22 Quotations involving traffic moving between points in the Southwestern Territory to be published in Agent J. D. Hughett's Tariff No. 1000 series.

By this method we have kept the rates stable on Section 22 Quotations involving traffic moving between points in the southwest. We realize that your experience has not been very satisfactory in publishing quotations in Tariff 1000, however, we hope that you will agree with us that this is the proper method to handle this quotation.

We are writing Mr. Harry Thompson to publish this quotation for our account and then advise Mr. James K. Cowling, Acting Director, Traffic Management Division, General Services Administration, Federal Supply Service, Washington, 25, D. C. of our actions.

Best regards.

Yours very truly,

CENTRAL FREIGHT LINES INC.

/s/ T. O. Horst

TOH/jm

cc: Mr. C. P. Romulo, Pa. Bldg.
Suite 951, Washington 4, D.C.

Counterclaim Document No. 64

INLAND FREIGHT LINES
Salt Lake City, Utah

April 25, 1956

Riss & Company
15 West 10th Street
Kansas City, Missouri

Received

Attention: Mr. A. J. Tait
General Traffic Manager

Dear Al:

Enclosed are copies of Revision # 2 to Inland Freight Lines
Tender # 136 as per our telephone conversation this morning.

This effects the rate of \$5.98, which as you know, is the original
rate without the increase of 6%. We will contact Bob Ryall of PIE in regard
to this increase and try and find out who the other carrier is, so that we can
work the increase of 6% on a common date.

Very truly yours,

INLAND FREIGHT LINES

/s/ Glen Goodrich

GG/df

Enclosures

[COPY]

Counterclaim Document No. 65

INTER-STATE MOTOR FREIGHT SYSTEM

Grand Rapids, Michigan

[Rec'd Sept. 10, 1956, Traffic Dept.
Riss & Co.]

Mr. W. Stiegale, G. T. M.
Roadway Express, Inc.
147 Park Street
Akron 8, Ohio

Mr. J. K. Newbold, V. P. - Traffic
Riss & Company, Inc.,
15 West Tenth Street
Kansas City 6, Missouri

Mr. E. L. Forbell, V. P. - Traffic
Chicago Express, Inc.
72 Fifth Avenue
New York 11, New York

Mr. A. W. Stout, G. T. M.
Eastern Express, Inc.
128 Cherry Street
Terre Haute, Indiana

Mr. E. H. Sall, G. T. M.
General Expressways System
201 West Roosevelt Road
Chicago, Illinois

Gentlemen:

Our Section 22 Rate Tender No. 381, dated November 7, 1954, to the GSA shows rates of 152¢, minimum 23,000 pounds, and 144¢, minimum 30,000 pounds, applicable on government records from Washington, D. C. to St. Louis, Missouri.

We understand you have rate tenders showing a rate of 135¢, minimum 23,000 pounds.

Our rate tender was issued nearly two years ago and in view of today's operating costs we are reluctant to reduce our level and we had in mind that it was very possible you would wish to reconsider your rate quotations on this movement.

Counterclaim Document No. 65
Page two

Will appreciate having you review your tonnage records and operating costs and discuss this movement with me at Cleveland the week of September 17 to determine which way the adjustment will be.

Yours very truly,

INTERSTATE MOTOR FREIGHT SYSTEM

A. E. Rohrer,
Traffic Manager

Counterclaim Document No. 66

**INTER-STATE MOTOR
FREIGHT SYSTEM**

GRAND RAPIDS, MICHIGAN

September 24, 1956

W. Stiegale, G.T.M.
Roadway Express, Inc.
147 Park St.
Akron, Ohio

Mr. J. K. Newbold, V.P. - Traffic
Riss & Company, Inc.
15 W. Tenth Street
Kansas City 6, Missouri

Mr. E. L. Forbell, V.P. - Traffic
Chicago Express, Inc.
72 Fifth Avenue
New York 11, New York

Mr. A.W. Stout, G.T.M.
Eastern Express, Inc.
128 Cherry Street
Terre Haute, Indiana

Mr. H. M. Sell, G.T.M.
General Expressways System
221 West Roosevelt Road
Chicago, Illinois

Gentlemen:

It is our understanding that your section 22 rate tenders to the General Services Administration applicable on records, office, old in boxes, from Washington, D. C. and Alexandria, Virginia to St. Louis, Missouri will be revised to reflect 152¢, minimum 23,000 pounds, and 144¢ minimum 30,000 pounds, subject to a common effective date of November 1, 1956.

Yours very truly,

**INTERSTATE MOTOR FREIGHT
SYSTEM**

/s/ A.E. Rohrer - Traffic Manager

AER:bm

(ORIGINAL IN 462-52)

Counterclaim Document No. 67

Omaha, Nebraska
October 8, 1956

File

Mr. Tom Olson
Rocky Mountain Motor Tariff Bureau, Inc.
4045 Pecos Street
Denver 11, Colorado

Dear Tom:

Pursuant to our telephone conversation of this date, this is confirmation of my request to establish rate between Joliet Arsenal and/or Kankakee Ordnance Works, Illinois, and Tooele Ordnance Depot in routes 1666 and 1982 of \$4.42 per cwt to be competitive with rate named by Riss and Ashworth in routes 1067 and 1100.

You will recall that I further advised that inasmuch as the \$4.42 rate published by the Bureau for the account of Riss and Ashworth was an error on the Bureau's part and that Riss and Company had requested cancellation of this rate, reinstating a rate of \$4.46, that it is our desire to have our \$4.42 rate, hereinbefore proposed, expire on the same date as the Riss-Ashworth rate cancellation became effective, and that our rate as presently published in routes 1666 and 1982 be reinstated.

It is further requested that route No. 69 be cancelled in its entirety as it is duplicating.

Yours very truly,

WATSON BROS. TRANSPORTATION
CO., INC.

cc: Mr. A.J. Tait, Riss & Co. /s/ D.E. Dunlap
Mr. Ray Peterson, Ringsby Truck Asst. to Gen. Traffic Manager
Mr. Clyde Ashworth, Ashworth Transfer
Mr. R. H. Clinton, Gallagher Freight Lines, Inc.

Counterclaim Document No. 68

November 8, 1956

Mr. R. J. Barr
Traffic Manager
All States Freight, Inc.
1250 Kelly Avenue
Akron 6, Ohio

[All-States General]

Dear Bob:

We presently have in effect our government tender 30-53 which provides for the application of class rates on shipments from Shelby, Ohio to points in Eastern Central territory. This was originally filed due to the fact that we do not have a concurrence in the tariffs with any carrier serving Shelby, and did not desire to set one up for general application.

We find now that this quotation has never been increased and on checking with our Cleveland terminal, we have been advised that you have a similar quotation, which also has not been increased, apparently in order to meet our competition. We would like very much to take the 6 percent increase on this, and would appreciate your advising whether you would do likewise.

Very truly yours,

James K. Newbold, Jr.

JKN:bb

cc: Mr. John Porter, CV

Counterclaim Document No. 69

SOUTHWEST FREIGHT LINES INC.
Kansas City 5, Kansas

Green

November 13, 1956

Mr. H. R. Core, ATM
Western Trucking Company
1535 North 7th Street
St. Louis 6, Missouri

File with 736-54

Dear Sir:

In connection with the movement of cartridge shells, empty, from Louisville, Kentucky to Savanna, Oklahoma, please be advised that I have talked with Mr. Tate of Riss and Company this date and find that they do maintain a Section 22 quotation on this movement on the basis of \$1.35, this being their quotation No. 736-54.

In the absence of Mr. Newbold, Mr. Tate could not state what action Riss and Company would take, but felt that if this movement has been moving on the basis of \$1.43, that they would consider adjusting their quotation to our level. Mr. Newbold will return to Kansas City Friday at which time I will discuss further with him and determine if the various quotations can be amended to the same basis maintained in MMFB Tariff 303, specifically \$1.43 per cwt.

Yours very truly,

SOUTH WEST FREIGHT LINES INC.

/s/ Vernon M. Masters,
Traffic Manager

cc: Mr. L. L. Newman
St. Louis, Missouri

Mr. J.K. Newbold
Kansas City 6, Missouri

Al Cancel 736-54 -
concur in 303 B 1.43
HG

11/19/56

Received

Counterclaim Document No. 70

RISS & COMPANY, INC.
Kansas City, Mo.

July 29, 1957

Mr. Walter F. Stiegele
General Traffic Manager
Roadway Express, Inc.
147 Park Street
Akron 8, Ohio

Dear Walt:

I am attaching for your information a copy of Supplement 1 to our Tender 1104-57, covering a movement from Lakehurst, New Jersey to St. Louis and Weldon Springs, Missouri.

Apparently we have crossed wires on this due to the fact that we were dealing with the consignee, whereas you apparently have discussed this matter with the shipper. We originally filed \$1.60 at the request of the consignee, who issued routing instructions to the shipper, only to find that the shipper had already received the \$1.59 quotation from you. We, naturally, had no alternative but to meet your quotation, which is the reason for the attached supplement.

Walt, this is not written in any spirit of criticism, as I am certain that neither one of us would have intentionally filed something lower than the other. It is merely apparently one of these things that happens when a shipper and consignee are both negotiating at the same time, and my only thought in writing you was to indicate that we are now on the same level. We will keep you advised of any changes in this quotation, if any, and I would certainly appreciate it if you would do the same.

Very truly yours,

/s/ James K. Newbold, Jr.

enclosure

November 8, 1955

Mr. W. J. Burns
Munitions Carriers Conference
1424 Sixteenth Street, N.W.
Washington, D.C.

Dear Bill:

We would like to acknowledge receipt of your letter of November 4, 1955, concerning a meeting of the Munitions Carriers Conference, to be held in Chicago, Illinois, on November 11, 1955.

It is understood from reading your correspondence that the object of this meeting will be to discuss the new rail tenders and to determine the policy to be adopted by the Munitions Carriers Conference in opposing these Section 22 rates and whether motor carriers should meet these rates.

It is our opinion that Riss & Company cannot meet the rail rates quoted in the official territory; however, Riss & Company will not participate in any plan or activity which will result in an agreement with members of the Munitions Carriers Conference as to the level of rates that will be quoted to the United States Government, covering the transportation of explosives and dangerous traffic. We believe that the matter of the level of rates at which we can profitably handle this type of traffic is a matter for Riss & Company to decide independently, based upon Riss cost figures. We have been advised by counsel that any other course of action is unlawful.

Very truly yours,
RISS & COMPANY, INC.
J. A. Reardon
Ass't. Vice-President
Government Division

JAR:ld

Counterclaim Document No. 72

KRAMER BROS. FREIGHT LINES, INC.
4195 CENTRAL AVENUE
DETROIT 10, MICHIGAN

June 26, 1957

File 142

Mr. G. P. Murphy, G.T.M.
Baltimore and Pittsburgh
Motor Express Co.
51st St. and A.V.R.R.
Pittsburgh 1, Pa.

Mr. P.M. Shepherd, G.T.M.
Wilson Freight Forwarding Co.
3636 Freight Forwarding Co.
Cincinnati 23, Ohio

Mr. C. W. Bucks, T.M.
Buch Express, Inc.
1500 Paxton Street
Harrisburg, Pa.

Mr. B. L. Forbell, V.P. -Traffic
Chicago Express, Inc.
72 Fifth Avenue
New York 11, New York

Kenneth Houghton, G.T.M.
Schreiber Trucking Co., Inc.
1315-1349 Washington Blvd.
Pittsburgh 6, Pa.

Mr. Walter F. Stiegele, GTM
Roadway Express, Inc.
P. O. Box 471
Akron 9, Ohio

Mr. A. W. Stout, G.T.M.
Eastern Express, Inc.
128 Cherry Street
Terre Haute, Indiana

Mr. L. M. Sell, G.T.M.
General Expressways System
271 W. Roosevelt Road
Chicago 5, Illinois

Mr. [Illegible]
Eastern Motor Dispatch, Inc.
Box 6168, Point Station
Columbus 23, Ohio

Mr. Eoge- Clay, T.M.
Yankee Lines, Inc.
1400 E. Archwood Avenue
Akron 1, Ohio

Mr. A. E. Rohrer, T.M.
Interstate Motor Frt. System
134 Grandville Avenue, S.W.
Grand Rapids 2, Michigan

Mr. J. J. Houston, G.T.M.
Shirks Motor Express Corp.
1001
Lancaster, Pa.

Mr. James K. Newbold, Jr.
Vice President-Traffic
Riss & Company, Inc.
15 W. 10th Street
Kansas City 6, Missouri

Mr. R. G. Boyd
Vice President-Traffic
The Norwalk Truck Line Co.
36 Woodlawn Avenue
Norwalk, Ohio

Counterclaim Document No. 72
Page two

Mr. Joseph S. Ruscetta, G.T.M.
Spector Freight System, Inc.
3000 Westcott Avenue
Chicago 8, Illinois

Mr. J. B. Campbell, T.M.
Motor Cargo, Inc.
W. Market Street
Akron 13, Ohio

Mr. J. R. Barr, T.M.
All States Freight, Inc.
1150 West Market St.
South Arlington Station
Akron 6, Ohio

To: Messrs.

Murphy, Bucks, Houghton, Stout
Lowney, Rohrer, Newbold, Jr.,
Ruscetta, Barr, Shepherd, Forbell,
Stiegelé, Sell, Clay, Houston, Boyd.
Campbell

File 142
June 26, 1957

Subject: Section 22 Rates for U.S. Post Office and
Government Printing Office from Washington,
D.C. and Franconia, Va. to ECK A Points.

Gentlemen:

Time was not available before or after the ECMCA General Committee meeting June 19-21 to discuss this matter but in talking to a member of you, a number of suggestions were made, viz.:

1. Appointment of a representative group to go to Washington, D.C. to speak to Mr. Al Stevens of the Government Printing Office and Mr. Carl R. Peterson of the Post Office about the rate situation.
2. To obtain a level of rates on a much higher basis than exists today; a modest increase by creating a uniform basis being preferable to a drastic revision more closely related to the commercial tariff class rates.

Counterclaim Document No. 72

Page three

As to the first suggestion, I am taking the liberty of appointing the following as members of the special committee and this is based on their prior interest in this subject:

F.M. Shepherd--Wilson Freight Forwarding
Kenneth Loughton--Schreiber Trucking
James K. Newbold-Riss & Company
Joseph S. Ruscetta--Spector Freight System
Walter F. Stiegele--Roadway Express, Inc.
J. J. Houston--Shirks Motor Express
A. W. Stout--Eastern Express, Inc.
Peter Badarak--Kramer Bros.

In view of Mr. Shepherd's previous conference with the government officials and the fact that definite time and date appointments are necessary to have, Mr. Shepherd is respectfully requested to arrange the time and date conference with them and notify the above respective committee thereof. A preconference of the committee may be had the day or evening before this meeting with the government officials or in the morning of the conference date. Anyone else to whom this letter is addressed is welcome to serve on this committee by writing to me and to Mr. Shepherd of his willingness to do so. As it usually happens, a conference date cannot always be met by everyone but if enough of us get together then we might just as well go ahead.

Will the members of this committee (and others) please write me and Mr. Shepherd of their acceptance of this committee appointment.

As to the second idea about the rate level, I selected a rate level that approximated the Class 35 exception rate because if Class 35 was followed through at every point, there would have been some specific drastic increases that would have caused commotion with the government officials at a time when the first step was to get something better than existed previously for many years without change. It was felt that we should tread slowly and softly on this rate program, concurrence from the government officials being more important as our first step in a modest relationship of rates to the prevailing commercial

Counterclaim Document No. 72

Page four

tariff rates on the same articles. A Class 35 exception or uniform class rate level gives us more than many of our commodity rates from and to the same points. This viewpoint has been briefly reviewed here for your ready reference.

Will you gentlemen, please give this matter your immediate consideration and reply. The first step is for you to advise with respect to the committee appointment. The views of everyone is also solicited as to the rate level to be considered by the committee.

Yours very truly,

KRAMER BROS. FREIGHT LINES, INC.

/s/ Peter Badarak

Peter Badarak
Traffic Manager

FB/gss

Received

[DEAD]

Counterclaim Document No. 74
Page one

Mr. Peter Badarak, Traffic Manager
Kramer Bros. Freight Lines, Inc.
4195 Central Avenue
Detroit 10, Michigan

July 1, 1957

Dear Pete:

This will acknowledge your letter of June 26th, under your file 142, concerning the appointment of an informal special committee to meet with the Post Office and the Government Printing Office with a view to revising rates on post cards and related articles.

While I am entirely in agreement with you that the present rates on these commodities are too low and should be revised upwards as promptly as possible, I cannot agree with the method of procedure which you outline. As you undoubtedly know, there is no provision in the Bureau of Section 5-A application providing protection for us on joint publication of Section 22 Quotations, or on joint negotiations with the Government. It would, therefore, appear that the formation of a special committee to negotiate jointly with the two departments you mention is in direct violation of the Anti-Trust Laws, and could subject us to prosecution and substantial fines.

Under the circumstances I must decline to serve on this committee and would recommend that in lieu of the method of procedure you outline we discuss this matter informally at the General Rate Committee meeting during the week of July 15th and see if we can figure out some alternative method of handling.

Very truly yours,

James K. Newbold, Jr.

JKN:gp

cc: Mr. Kenneth Houghton, G. T. M.
Schreiber Trucking Co., Inc.
1315-1399 Washington Blvd.
Pittsburgh 6, Pennsylvania

Mr. A. W. Stout, G. T. M.
Eastern Express, Inc.
128 Cherry Street
Terre Haute, Indiana

Mr. J. S. Ruscetta, G. T. M.
Spector Freight System, Inc.
3100 South Wolcott Avenue
Chicago 8, Illinois

Mr. P. M. Shepherd, G. T. M.
Wilson Freight Forwarding Co.
3636 Follette Avenue
Cincinnati 23, Ohio

Mr. Walter F. Stiegele
Roadway Express, Inc.
P. O. Box 471
Akron 9, Ohio

Mr. J. J. Houston, G. T. M.
Shirks Motor Express Corp.
1091 Manheim Pike
Lancaster, Penna.

Counterclaim Document No. 75

CHICAGO EXPRESS, INC.
807 WEST STREET
NEW YORK 14, N. Y.

May 21, 1951

Mr. B. M. Pierce
Mid-States Freight Lines, Inc.
5200 S. Pulaski Rd., Chicago 32, Ill.

Received

Mr. J. A. Maguire
Liberty Motor Freight Lines, Inc.
1535 Paterson Plank Road
Secaucus, N. J.

Mr. H. H. Moore
Long Transportation Co.
1020 16th St.
Detroit, Michigan

Mr. J. S. Ruscetta
Spector Motor Service Inc.
600 West 25th Street
Chicago 16, Illinois

Mr. C. W. Hicks
Eastern Motor Express, Inc.
128 Cherry Street
Terre Haute, Indiana

Mr. M. P. Hester
Riss & Company, Inc.
P. O. Box 7332
North Kansas City 16, Mo.

Gentlemen:

I have received copy of communication from Department of the Navy, Bureau of Supplies and Accounts addressed to several of the carriers to whom copies of this letter are being forwarded with respect to the Section 22 Quotations applicable on Freight, all kinds, in truckloads, straight or mixed loads, between the Great Lakes Naval Training Station, Great Lakes, Illinois and various eastern points at which we are at variance in our quotations.

It is with the thought in mind that this letter is addressed to each of the carriers involved to get together and arrive at some basis of quotation that will prove desirable and still attract the traffic. Your advice and comment as to such proposal will be greatly appreciated.

Yours very truly,

CHICAGO EXPRESS, INC.

/s/ E. L. Forbell

E. L. Forbell

General Traffic Manager

ELF:mh

Counterclaim Document No. 76

May 23, 1951

Mr. E. L. Forbell, General Traffic Manager
Chicago Express, Inc.
507 West Street
New York 14, New York

Received

Dear Mr. Forbell:

This has reference to your letter of May 21, 1951 relative to the individual Section 22 Quotations applicable on freight, all kinds, truckloads staight or mixed loads, between Great Lakes, Illinois and Eastern points.

We are entirely in accord with your suggestion that each of the carriers involved get together to determine a reasonable basis of rates to protect on this traffic.

We are willing to withhold any action on this matter pending a meeting with all of the other carriers involved. I would like to suggest that this meeting be held in connection with our June Meeting at Hershey, Pennsylvania.

Very truly yours,

SPECTOR MOTOR SERVICE, INC.
/s/ J. S. Ruscetta

J. S. Ruscetta
General Traffic Manager

JSR/mab

cc: Mr. B. M. Pierce
Mid-States Freight Lines, Inc.
5200 S. Pulaski Rd., Chicago 32

Mr. J. A. Maguire
Liberty Motor Freight Lines, Inc.
1535 Paterson Plank Rd.
Sacaucus, N. J.

Mr. H. H. Moore
Long Transportation Co.
1020 16th St.
Detroit, Michigan

Mr. C. W. Hicks
Eastern Motor Express, Inc.
128 Cherry Street
Terre Haute, Indiana

Mr. M. P. Hester
Riss & Company, Inc.
P. O. Box 7332
North Kansas City 16, Mo.

Counterclaim Document No. 77

**EASTERN MOTOR EXPRESS, INC.
128 CHERRY STREET
TERRE HAUTE, INDIANA**

May 23, 1951

When replying, please refer to:
File: A 601-6
(U. S. Gov't. Quotation No. 10)

**Mr. E. L. Forbell
Chicago Express, Inc.
507 West Street
New York 14, New York**

Received

Dear Mr. Forbell:

Answering your general letter dated May 21 in connection with certain individual U. S. Section 22 quotations.

The rates we have to Great Lakes, Illinois, were established to meet rail competition. However, we would be happy to discuss this situation with those concerned during our June meeting at Hershey when the representatives of the carriers involved will be together.

Very truly yours,
EASTERN MOTOR EXPRESS, INC.
/s/ C. W. Hicks
General Traffic Manager

cc: **Mr. B. M. Pierce
Mid-States Freight Lines, Inc.
5200 South Pulaski Road
Chicago 32, Illinois**

**Mr. J. A. Maguire
Liberty Motor Freight Lines, Inc.
1535 Paterson Plank Rd.
Secaucus, New Jersey**

**Mr. H. H. Moore
Long Transportation Company
1020 16th Street
Detroit, Michigan**

**Mr. J. S. Ruscetta
Spector Motor Service Inc.
600 West 25th Street
Chicago 16, Illinois**

**Mr. M. P. Hester
Riss & Company, Inc.
P. O. Box 7332
North Kansas City 16, Mo.**

Counterclaim Document No. 78

LONG TRANSPORTATION COMPANY
DETROIT, MICHIGAN

File 44 A
May 26, 1951

Mr. E. L. Forbell, General Traffic Manager
Chicago Express, Inc.
507 West Street
New York 14, New York

Received

Dear Mr. Forbell:

This will acknowledge your joint letter dated May 21, 1951 concerning section 22 quotations applying between Great Lakes, Illinois and Eastern destinations.

We have received a copy of Mr. Ruscetta's letter dated May 23, 1951 and believe that his suggestion is entirely logical.

So far as I know at this time, our company will be represented at the June meeting at Hersey and will take no action until after this meeting.

Very truly yours,

LONG TRANSPORTATION COMPANY

/s/ H. H. Moore

H. H. Moore

HHM/gm

cc: Mr. B. M. Pierce
Mid States Freight Lines, Inc.
5200 South Pulaska Road
Chicago 32, Illinois

Mr. J. S. Ruscetta
Spector Motor Service Inc.
600 West 25th Street
Chicago, Illinois (16)

Mr. J. A. Maguire
Liberty Motor Freight Lines, Inc.
1535 Paterson Plant Road
Secaucus, New Jersey

Mr. Charles W. Hicks
Eastern Motor Express, Inc.
128 Cherry Street
Terre Haute, Indiana

Mr. M. P. Hester
Riss & Company, Inc.
P. O. Box 7352
North Kansas City 16, Missouri

MIDSTATES FREIGHT LINES, INC.
CHICAGO 32, ILLINOIS

May 28, 1951

[14F - 51]

Chicago Express, Inc.
507 West Street
New York 14, N. Y.

Received

Re: Section 22 Quotations

Attention: E. L. Forbell General Traffic Manager

Dear Ed:

This will acknowledge our copy of your letter addressed to various Eastern carriers dated May 21, 1951 concerning the subject.

At our General Rate Committee Meeting on February 5, 1951, a motion was made and seconded that carriers be requested to furnish the Bureau, copies of all Government Rate Quotations now in effect and for the future so that such Quotations could be publicised to all members without carrier identification. This motion carried. On February 27, 1951, we sent Mr. L. H. Russell all of our Section 22 Quotations in-so-far as he publishes both local and overhead rates.

No doubt, you have a copy of Evarett's Bulletin No. 2645 dated May 2nd to which he attached all effective Quotations that had been furnished his office up to the date of his bulletin. You will note that at the top of page 2 of the exhibit attached to his bulletin, there is no explanation as to (a) and (b), although I am inclined to believe that the lower rates apply Westbound. --The other set of Freight All Kinds rates shown next to the bottom of page 2 involves an error for I am almost certain that the 25,000 lb. \$1.40 rate applies Westbound instead of Eastbound.

On Page 1 of this exhibit in connection with the \$1.07 rate applying on Paint and Paint Materials. We have been advised that the \$1.07 rate applying from Chicago to New York was also published in Tariff 15 Series and that some of our carriers received requests to establish a Section 22 Quotation at the same rate applying to Philadelphia, Pa. Subsequent to

Counterclaim Document No. 79
Page two

that time, the \$1.07 rate applying to New York has been increased to \$1.11 and the Bureau Tariff rate to Philadelphia is now \$1.09. Therefore, I think both of these \$1.07 rates should be cancelled. I think you will all agree that there are more Section 22 Quotations in existence than what was furnished Mr. Russell's office and I agree with you that if we would all lay our cards on the table, we would accomplish additional revenue without losing any traffic.

Yours very truly,

MIDSTATES FREIGHT LINES, INC.

/s/ B. M. Pierce

B. M. Pierce

Vice President - Rates & Tariffs

- cc: J. S. Ruscetta
Spector Motor Service, Inc.
600 West 25th Street
Chicago 16, Illinois
- cc: J. A. Maguire
Liberty Motor Freight Lines, Inc.
1535 Paterson Plank Road
Secaucus, New Jersey
- cc: M. P. Hester
Riss & Company, Inc.
P. O. Box 7332
North Kansas City 13, Mo.
- cc: C. W. Hicks
Eastern Motor Express, Inc.
128 Cherry Street
Terre Haute, Indiana
- cc: H. H. Moore
Long Transportation Company
1020 18th Street
Detroit, Michigan

FMP

Counterclaim. Document 80

[14 F-51]✓

2940 West 36th Street
Chicago 32, Illinois
May 29, 1951

Mr. E. L. Forbell, General Traffic Manager
Chicago Express, Inc.
507 West Street
New York 14, New York

Received

Dear Mr. Forbell:

This will acknowledge your general letter of May 21, 1951 in regard to certain Section 22 Quotations applicable on Freight, all kinds, in truckloads, between Great Lakes, Illinois and various eastern points.

The suggestion that this matter be held in abeyance until the Hershey meeting of the Association appears to me the best manner of handling the situation. At that time, it might be possible to work out an uniform basis.

Very truly yours,

LIBERTY MOTOR FREIGHT LINES, INC.

/s/ Gordon R. Payne

Gordon R. Payne
Chief of Tariff Section

CC:

Mr. B. M. Pierce
[Illegible] Freight Lines, Inc.
3--- South Palaski Road
Chicago, Illinois

Mr. J. S. Ruesetta
Spector Motor Service, Inc.
600 West 25th Street
Chicago 16, Illinois

Mr. M. P. Hester
Riss & Company, Inc.
P. O. Box 7332
North Kansas City 16, Mo.

Mr. K. M. Moore
Long Transportation Company
1020 18th Street
Detroit, Michigan

Mr. Charles W. Ricks
Eastern Motor Express, Inc.
100 Cherry Street
Terre Haute, Indiana

Counterclaim Document 81

[Remind Mr. Hester to make a long-distance call on
this (14-F) about the 20th of June. M.L. 6-1-51]
Mr. E. L. Forbell, General Traffic Manager May 28, 1951
Chicago Express, Inc.
507 West Street.
New York 14, New York

Subject: File 14-F

Dear Mr. Forbell:

This refers to your letter of May 21, 1951, suggesting a meeting of the carriers with respect to Section 22 Quotations for account of the Government. In view of the activities of the Department of Justice and the fact that Section 22 Quotations are not covered by the applications of the various bureaus under Section 5-A, I want no part of any such meeting; therefore, we will not be represented.

Yours very truly,

M. P. Hester
Vice President - Traffic

cc: Mr. D. K. Pierce, Mid-States Freight Lines, Inc., 5200 South Pulaski
Road, Chicago 32, Illinois
Mr. J. A. Maguire, Liberty Motor Freight Lines, Inc., 1535 Peterson
Plank Road, Secaucus, N.J.
Mr. H. R. Moore, Long Transportation Co., 1020 18th St., Detroit,
Michigan
Mr. J. B. Ruscetta, Spector Motor Service, Inc., 600 West 25th
Street, Chicago 11, Illinois
Mr. Charles W. Ricks, Eastern Motor Express, Inc., 128 Cherry
St., Terre Haute, Indiana

Counterclaim Document 82

MEMORANDUM

June 21, 1951

Dictated 6/20/51

SUBJECT: Quotation 14-F

Discussed this matter with party on long-distance 'phone. The subject will be before interested carriers at Hershey, Pennsylvania. I agreed to go along with whatever level of rates suggested by conference. We are to be notified of the revised basis in time to issue new quotation.

M. P. Hester

MPH:ml

Counterclaim Document 83

[9-16-53 -- 9-17 ck Publication 9/5 - 10/1]

275-9-53

September 3, 1953

Mr. Everett C. Funk
Rocky Mountain Motor Tariff Bureau
1600 Logan Street
Denver, Colorado

[Published item 285 - RM. 43-B
20th Rev. Pg. 34-A issued 9-11-53
Route 35]

Dear Everett:

We wish to propose that routes hereinafter set out be published in connection with Item 285, 1st Revised Page 33-P of your Government Quotation No. 43-B. Such routes to apply in connection with ammunition and/or explosives and/or fireworks moving from Umat 11a Ordnance Depot, Ordnance, Oregon to Iowa Ordnance Plant, Burlington, Iowa; rate 491 cents per cwt., minimum weight 30,000 pounds.

Route 35:

1 - Portland Pendleton - Garrett - Ashworth - Riss

2 - Portland Pendleton - Garrett - Ringsby - Boulder - Riss

Through the medium of a copy of this proposal being sent to the traffic official of each of the named carriers, we are asking that they advise you of their concurrence in these proposed routes as they are affected.

We wish to have the routings bear an effective date of September 1, 1953 and to ask that you wire the Department of the Army of the publication of these routings upon completion of receipt of concurrences from the carriers named.

Thank you.

Very truly yours,

RISS & COMPANY, INC.

/s/ A. J. Tait

General Traffic Manager

AJT:as

1st Revised Page 33-F
cancels Original Page 33-F

Counterclaim Document 84
Page 1

U. S. Government Quotation No. 43-B

Rates in Cents per 100 Pounds on Ammunition and/or Explosives and/or
Fireworks Subject to Volume Minimum Weights as Indicated (Except as
Noted)

ITEM	From	To	Rates 30M	Route
	Shumaker, Ark.	El Toro, Calif.	445	20
	Doyline, La.	Hawthorne, Nev.	477	21
	Redstone Arsenal, Huntsville, Ala.	Hawthorne, Nev.	627	22
	Louisiana Ordnance Depot, Doyline, La.	Fallbrook, Calif. Hawthorne, Nev.	445 477	23 24
	Joliet Arsenal, Joliet, Ill.	Fallbrook, Calif.	622	26
285 (Con- tin- ued)	Schumaker, Ark.	Naval Air Station, near El Centro, Calif.	445	27
	Naval Ammunition Depot, Crane, Ind.	Port Chicago, Calif.	605	28
	Black Hills Ordnance Depot, Igloo	Bangor, Wash. Beaver Ammunition Depot, Lacoda, Ore.	469 452	33 32
		Fort Lewis, Wash.	511	29
	Sunflower Ordnance Depot, Desota, Kans.	Inyokern, Calif.	554	30
	Savanna Ordnance Depot, Proving Grounds, Ill.	Herlong, Calif.	544	34
	Umatilla Ordnance Depot, Ordnance, Ore.	Iowa Ordnance Plant, Burling- ton, Iowa	491	35

NOTE: Consignor to load, brace and stow and
Consignee to unload and remove bracing.

(Item Continued on Following Page)

[Illegible]

Issued August 24, 1953

Effective August 24, 1953

Issued by
Rocky Mountain Motor Tariff Bureau, Inc., Agent
[Illegible]

Correction No. 1753

20th Revised Page 34-A

cancels 19th Revised Page 34-A

U. S. Government Quotation 43-B

Item	Rates in Cents per 100 Pounds on Ammunition and/or Explosives and/or Fireworks, Subject to Volume Minimum Weights as indicated (except as noted).
------	---

285	Route 18:
(Con-	I50--SAL--G15.
tin-	I50--SAL--83--VER--E9--RAN--873.
ued)	P5.
	T63--ELDO--I125.
	W63--RENO--N155--SAL--R165--
	CRA--8247.

Route 19:

A270--DEN--W25.

B30--SAL--G15--Den--U15.

B30--SAL--I125--DEN--U15.

B30--SAL--M405--R175--DEN--U15.

P5--DEN--U15.

Route 20: S290--LA--N35--AMA--R45--

ELD--A230.

Route 21:

N155--LA--R175--ELP--395--DAL--

4255.

N155--LA--R175--ELP--G95--CAL--

S465--Shre--55.

Route 23:

S290--LA--B175--ELP--G95--CAL--

S465--SHRE--55.

S290--LA--N35--ALA--R45--DAL--

H255.

Route 24:

N155--LA--W175--ELP--G95--DAL--

H255.

N155--LA--W175--ELP--G95--DAL--

S465--SHRE--H55.

\$4.155--MC--N35--AMA--R45--CAL--

H55 or H255.

Route 26:

S290--LA--N35--AMA--L115--OKL--

W220--JOL--J45.

Route 27: W175-ELP--395--DAL--

H255.

[Illegible]

Issued September 21, 1953

Effective September 21, 1953 except

Issued by

[illegible]

Correction No. 1934

Rocky Mountain Motor Tariff Bureau, Inc. Agent

Route 28:

I50-SAL-R165-ORE--B247--DEN--
W25--CHI--H205.
W63--RENO--N155--SAL--B166--
ORA--B247--DEN--W25--C-1--205.

Route 29: T20--TAC--C485--BIL--8385.

Route 30:

A160--TUL--G95--ELP--W175.
N155--SAL--R165--CRA--B25.

Route 31:

C485--BIL--8385--OMA--425.
P218--PEN--G25--SAL--A270--DEN--
R185 or
P218--PEN--G25--SAL--R165--ORA--
B247--DEN--W25.
P218--PEN--G25--SAL--G15--DEN--
W25.

Route 32:

S189--PQR--D485--BIL--B385.
S189--G25--A270--B385.

Route 33: B385-BIL--C485--SEA--B145.

Route 34:

W63--RENO--I50 or N155--SAL--R165--
ORA--B147--DEN--425.
W63--RENO--I50--SAL--G15--DEN--
W25.

Route 35:

§§P218--PEN--G25--SAL--A270--
DEN--R185.
P218--PEN--G25--SAL--G15--DEN--
W25.
P218--PEN--G25--SAL--R185--CRA--
B247--DEN--
§§R185 or W25.

§§§Route 36:

W63--RENO--C485--CHI--H205--68
C291.

Counterclaim Document 84
Page 4

Item	Rates in Cents Per 100 Pounds on Ammunition and/or Explosives and/or Fireworks, Subject to Volume Minimum Weights as Indi- cated (Except as noted).	
285 (Con- tin- ued)	Route 18:	Route 28:
	I50--SAL--G15.	I50--SAL--R165--CRA--
	I50--CAL--L3--VER--E9	R247--DEN--W25--CHI--H205.
	--RAN--873.	W63--RENO--N155--SAL--
	P5.	R165--CRA--8247--DEN--W25--
	W63--ELKO--I125.	CHI--H205.
	W63--RENO--I125--SAL--R165	Route 29: T20--TAC--C485--
	--CRA--B247.	BIL--B385.
	Route 19:	Route 30:
	A270--DEN--W25.	A160--TUL--095--ELP--W175.
	B30--SAL--G25--DEN--U15	N155--SAL--R165--CRA--
	or W25.	B247--DEN--W25.
	B30--SAL--I125--DEN--U15.	Route 31:
	B30--SAL--U405-R185--DEN--	C485--BIL--B385--OMA--W25.
	U15.	P218--PEN--G25--SAL--A270--
	P5--DEN--U15.	DEN--R185 or W25.
	Route 20: S290--LA--A35--	P218--PEN--G25--SAL--G15--
	AMA--R45--ELD--A230.	DEN--W25.
	Route 21:	Route 32:
	N155--LA--W125--ELP--G95--	S189--POR--C485--BIL--8385.
	DAL--H255.	S189--G25--A270--B385.
	N155--LA--W125--ELP--G95--	Route 33: B385--BIL--C485--SEA--
	DAL--S465--SHRE--H55.	B145.
	Route 23:	Route 34:
	S290--LA--W125--ELP--G25--	W63--RENO --I50 or N155--SAL--
	DAL--R405--SHRE--H55.	R165--CRA--B247--DEN--W25.
	§§S290--LA--N35--AWA--	W63--RENO--I50--SAL--G15--
	R45--DAL--H255.	DEN--W25.
	Route 24:	Route 35:
	N155--LA--W175--ELP--195--	P285--PEN--G25--SAL--R165--
285 (Con- tin- ued)	DAL--H255.	CRA--B247--DEN--425.
	N155--LA--W175--ELP--G95--	P285--DEN--G25--SAL--G15--
	DAL--S465--SHRE--H65.	DEN--W25.
	Route 26:	
	S290--LA--N35--AMA--L115	
	--OKL--M220--JOL--J45.	
	Route 27: W175--ELP--G95--	
	DAL--H255.	

FILE COPY

RISS & COMPANY, INC.
15 West 10th Street
Kansas City, Missouri

Date: October 21, 1953

File: LFL 7.R 43-B

Rocky Mountain Motor Tariff Bureau
1600 Logan Street
Denver, Colorado

Attention: Mr. T. J. Olsen

Gentlemen:

Please accept this letter as the concurrence of Riss & Company, Inc. in the proposal of Inland Freight Lines, Salt Lake City, Utah, dated September 21, 1953, adding this company in Item Number 550, Route(s) 1, 3 and 4, your U. S. Government Quotation No. 43-B, item to be effective November 1, 1953.

Thank you.

Very truly yours,

RISS & COMPANY, INC.

/s/ A. J. Tait

A. J. Tait

General Traffic Manager

AJT:as

cc: Inland Freight Lines
Uintah Freight Lines
Eastern Utah Transportation Company
Doe. Freight Lines, Inc.

bcc: Don Maguire, Kansas City
C. H. Rhodebeck, New York
E. Strohfield, Oklahoma City
C. P. Romulo, Washington, D. C.
Joe Meyer, Baltimore
J. K. Newbold, Kansas City
Larry Quinn, Kansas City
Ray Severance, Kansas City
George [Illegible], Oklahoma City
Marie Palmer, Topeka

Division to Riss & Company, Inc. 47 %.

Counterclaim Document 86

RISS & COMPANY, INC.

From:

Name J. K. Newbold

Date April 10, 1957

Terminal Riss Bldg.

Terminal Denver, Colorado

Attached please find a list of items in Rocky Mountain Tariffs 43-D and 51, to which we are not a party. Due to the fact that all of these items will produce good per mile earnings, it is my suggestion that we concur.

Please check them over and advise. Thank you.

Yours truly,

/s/ Bob Strohfield

Bob Strohfield
Sales Manager
Southwest Division

BS:mta

cc: Jack Tucker, OC

[H. Green - Howard, Please see me on this - Jim]

[OK to concur movement - comes up from time to time & will help Denver

HTG 4/15/57]

[Add IMA per EES 4-16-57 called from
Denver 2:05 P.M.]

Counterclaim Document 86
Page two

ROCKY MOUNTAIN TARIFF 43-D

ITEM NO.	ROUTE NO.	SUGGESTED ROUTING
3080	3 & 4	Garrett (25) Denver - Riss (185)
2870	2	Garrett (25) Denver - Riss (185)
3075	1	Garrett (25) Denver - Riss (185)
5800	26	Garrett (25) Denver - Riss (185)
"	6	Riss (185) Denver - R-1530 Ringsby R165
"	23	Riss (185) Denver - Garrett (25)
"	1	Riss (185) Denver - Garrett (25)
"	22	Riss (185) Denver - Garrett (25)
"	21	Riss (185) Denver - Garrett (25)
"	13	Riss (185) Denver - Garrett (25)
"	23	Riss (185) Denver - Garrett (25)
"	12	Riss (185) Denver - Gallagher (15)
"	15	Riss (185) Denver - Garrett (25)
"	4	Riss (185) Denver - Garrett (25)
6305	1	Riss (185) Denver - Garrett (25)
6310	1	Garrett (25) Denver - Riss (185)
6340	X All routes served by Riss (185) Denver - Garrett (25)	
8965	1, 2 & 4	Best ways
3040	1 & 2	Garrett (25) - Denver - Riss (185)

ROCKY MOUNTAIN TARIFF 51

ITEM NO.	ROUTE NO.	SUGGESTED ROUTING
1200	X 2286	R165 Ringsby (1530) Denver - Riss (185) Tinker to March AFB, Calif.
1200	X 2309	Garrett (25) Denver - Riss (185) San Bernardino, Calif. to Tinker
1200	X 3469	P.I.E. (5) Denver - Riss (185) & D.C. (105) Denver - Riss (185) Seattle, Wash. to Tinker

Counterclaim Document 87
Page one

NEVADA CALIFORNIA TRANSPORTATION CO.
1603 E. Second Street
Reno, Nevada

October 28, 1957

Mr. Tom Olsen
Rocky Mountain Tariff Bureau, Inc.
P. O. Box 3737, Chaffee Station
Denver 21, Colorado

Received

Dear Sir:

Please refer to Item 600, Rocky Mountain Quotation No. 52.

We request that route numbers on sheets attached hereto be amended to include Nevada California Transportation Co. (N60), Rates and routes shown have already been established in the quotation.

NCT and Wells Cargo divisions are on the same basis as pertains to RMMTB quotations.

We are allowing all carriers shown two copies of our request and ask that they sign one copy and forward direct to you, retaining one copy for their files.

Very truly yours,
Nevada California Transp. Co.
/s/ B. E. Wheeler
B. E. Wheeler

Received

Counterclaimant Document 87
Page two

BETWEEN HERLONG, CALIFORNIA AND:

Item 600 RMMTB
QUO. #52

Pueblo Ord. Depot

Route 3419- N60 or W63/P5-Den/R185.
" 3420- M60 or W63/P5.
" 1742- N60 or W63/P5.
" 3421- N60 or W63/P5-Den/R185.

East Alton, Illinois

Route 1118- N60 or W63/W175-Elp/095-Ok1/R185.
N60 or W63/P5-Den/R185.

Downers Grove, Illinois

Route 3245- N60 or W63/P5-Den/R185.

Jacksonville, Illinois

Route 3261- N60 or W63/P5-Den/R185.
" 3262- N60 or W63/P5-Den/R185.

Joliet Arsenal, Illinois

Route 1667 - N60 or W63/A270-Den/R185.
2447 - N60 or W63/W175-Elp/025-Ok1/R185.
N60 or W63/P5-Den/R185.

Kankakee Ordnance, Illinois

Route 2448- N60 or W63/A270-Den/R185.
" " - N60 or W63/P5-Den/R185.
" 1995- N60 or W63/A270-Den/R185.
" 1499- N60 or W63/W175-Elp/095-Ok1/R185.

Savanna Ordnance, Illinois

Route 58 - N60 or W63/P5-Den/R185.
*N60 or W63/W175-Elp/095-Ok1/R185.
N60 or W63/W175-Elp/095-Ok1/R185-Jol/R313.

Indiana Arsenal-Charleston, Indiana

Route 92 - *N60 or W63/W175-Elp/095-Ok1/R185.
N60 or W63/W175-Elp/095-Ok1/R185-Jef/A35.
Route 91 - *N60 or W63/W175-Elp/095-Ok1/R185.
N60 or W63/W175-Elp/095-Ok1/R185-Jef/A35.

Iowa Ordnance Plant-Burlington, Iowa

Route 165 - N60 or W63/P5-Den/R185.

Fort Riley, Kansas

Route 3535 - N60 or W63/P5-Den/R185.

" 3536 - N60 or W63/P5-Den/R185.

Kansas Ord Plant, Parsons, Kansas

Route 3471 - *N60 or W63/P5-Den/R185.

" 3472 - N60 or W63/P5 or R185.

" 168 - N60 or W63/P5-Den/R185.

Sunflower Ordnance-Desoto, Kansas

Route 2699- N60 or W63/P5-Den or R185.

" 2700- N60 or W63/P5-Den/R185.

BETWEEN HERLONG, CALIFORNIA AND:

Wichita, Kansas

Route 3839- N60 or W63/P5-Den/R185.

" 3840- N60 or W63/P5-Den/R185.

Indian Head, Maryland

Route 1087- N60 or W63/P5-Den/R185-Balt/B17 or W295.

N60 or W63/W175-Elp/095 Okl/R185-Balt/B17 or W295.

Lake City Arsenal, Missouri

Route 3764- N60 or W63/P5-Den/R185.

" 3765- N60 or W63/P5-Den/R185.

Cornhusker Ordnance-Copland, Nebraska

Route 1672- N60 or W63/P5-Den/U15.

" 1673- N60 or W63/P5-Den/U15.

" 1755- N60 or W63/A270-Den/U15.

" 1756- N60 or W63/A270-Den/U15.

Naval Ammo. Depot, Hastings, Nebraska

Route 1678- *N60 or W63/P5-Den/U15.

" 1679- N60 or W63/P5-Den/U15.

Nebraska Ord. Depot, Firestone

Route 2202- N60 or W63/P5-Den/R185-Oma/N79.

" 1646- *N60 or W63/P5-Che/B385-Oma/T150.

" 1647- N60 or W63/P5-Che/B385-Oma/T150.

Sioux Ord-Panhandle, Nebraska

Route 236- N60 or W63/P5-Den/U15.

Chemical Center, Cranbury, New Jersey

Route 3924- *N60 or W63/P5-Den/R185.

N60 or W63/P5-Den/R185-Balt/W295.

Route 3925- *N60 or W63/P5-Den/R185.

N60 or W63/P5-Den/R185-Balt/W295.

Hercules Powder-Kenvil, New Jersey

Route 3972- *N60 or W63/P5-Den/R185.

N60 or W63/P5-Den/R185-Balt/W295.

Route 1258- *N60 or W63/P5-Den/R185.

N60 or W63/P5-Den/R185-Balt/W295.

Naval Ammo. Depot, Earle, New Jersey

Route 4022- *N60 or W63/P5-Den/R185.

N60 or W63/P5-Den/R185-Balt/W295.

Pedricktown, New Jersey

Route 4058- *N60 or W63/P5-Den/R185.

N60 or W63/P5-Den/R185-Balt/W295.

Picatinny Arsenal-Dover, New Jersey

Route 2598- *N60 or W63/P5-Den/R185.

N60 or W63/P5-Den/R185-Balt/W295.

*N60 or W175-Elp/095-Ok1/R185.

N60 or W63/W175-Elp/095-Ok1/R185/W295.

BETWEEN HERLONG, CALIFORNIA AND:

Raritan Arsenal-Metuchen, New Jersey

Route 4147 - *N60 or W63/P5/R185.

N60 or W63/P5-Den/R185-Balt/W295.

" 4148 - *N60 or W63/P5/R185.

N60 or W63/P5-Den/R185-Balt/W295.

Seneca Ordnance Depot, Romulus, New York

Route 4255 - *N60 or W63/P5-Den/R185.

" 4256 - N60 or W63/P5-Den/R185.

Erie Ordnance - La Cerne, Ohio

Route 4294 - *N60 or W63/P5-Den/R185.

Westerville, Ohio

Route 4358 - N60 or W63/P5-Den/R185.

" 4359 - N60 or W63/P5-Den/R185.

Naval Ammun. Depot, McAlester-Savanna, Haywood.

Route 27 - N60 or W63/A270-Cal/T159.

" 4422 - N60 or W63/P5-Den/R185.

" 4423 - N60 or W63/P5-Den/R185.

Letterkenny Ord., Culbertson, Pennsylvania

Route 2509 - *N60 or W63/W175-Elp/G95-Ok1/R185.

" 2510 - *N60 or W63/W175-Elp/G95-Ok1/R185.

Black Hill Ordnance, Igloo, South Dakota

Route 1322 - *N60 or W63/P5-Den/B385.

Route 1323 - N60 or W63/P5-Den/B385.

Defense, Texas

Route 313 - N60 or W63/W175-Elp/M155-Dal/S375.

Radford Arsenal - Radford or Cowan, Virginia

Route 444 - N60 or W63/W175-Elp/M155-Dal/S375-Mem/H205-Lou/W218.

A35	P5
A280	R185
B17	R313
B385	S375
C25	T159
C95	U15
H205	W175
M155	W295
N79	W218

Counterclaim Document 88

Central States Motor Freight Bureau, Inc.
GOVERNMENT RATE SHEET NO. 49

COMMODITY: All Commodities

BETWEEN: Jeffersonville, Ind.

AND: Columbus, Ohio

RATE: 78¢

MINIMUM WEIGHT: 20,000 lbs.

PARTICIPATING CARRIERS:

American Transportation, Inc.
Braddock Motor Freight, Inc.
Capital Freight Lines, Inc.
The C & D Motor Delivery Company
C. I. M. & L. Transit Corporation
Clemans Truck Line, Inc.
The Cleveland, Columbus & Cincinnati Highway, Inc.
Commercial Motor Freight, Inc.
Commercial Motor Freight, Inc. of Indiana
Dixie Ohio Express Co.
Federal Express, Inc.
Foster Freight Lines, Inc.
Hancock Trucking Line, Inc.
Hargis Truck Line, Inc.
Hayes Freight Lines, Inc.
Helm's New York-Pittsburgh Motor Express, Inc.
Huey Motor Express
Indianapolis Forwarding Company
Interstate Motor Freight System
Meeks Motor Freight
Miami Transportation Company
Riss & Company, Inc.
Security Cartage Company, Inc.
Standard Freight Lines, Inc.
The Silver Fleet Motor Express
Western Trucking Company, Inc.
Wilson Freight Forwarding Company

EFFECTIVE: July 14, 1950

Counterclaim Document 89

No. 71 - 6-25-52

At Hotel President, K. C., Mo., 10 a.m. to 5:20 p.m. checking out rates
Middlewest 303-B Government rate quotations tariff - AJT

Counterclaim Document 90

RISS & COMPANY, INC.

INTER-OFFICE CORRESPONDENCE

To:

Name A. J. Tait

Date 11 10 52

Terminal Riss Bldg., Kansas City

Terminal Oklahoma City

Subject: Item 1425 series, Middlewest Tariff #303-C

Please request the bureau to show our participation, locally, in subject item which names rates on old government records, in steel transfer cases, from Dallas & Ft. Worth, Texas to Kansas City and St. Louis; rates being 98¢ and 114¢ respectively based on a 28M minimum. Mileage earnings would be .5380 to Kansas City and 4750 to St. Louis,

/s/ E. E. Strohfield

BL

E. E. Strohfield

cc: C. H. Rhodbeck, NYC
M. D. Robeson, KC
Don Sable, Dallas

Received

MIDDLEWEST MOTOR FREIGHT BUREAU
Publication Instructions

Received

Date: November 20, 1952
Proposal No.: C-2451
File C5-44

TO COMPILATION DEPARTMENT:

Please publish the following in the next regular supplement to each tariff involved, except as otherwise directed:

Tariff(s) 303-C

Item 1425-C (supplement 9) add routes as follows:

Single line:

Riss & Company, Inc. for the rates from Dallas and Fort Worth, Texas to Kansas City, Missouri and St. Louis, Missouri.

Published to be effective November 17, 1952

Joint line:

The Chief Freight Lines Company to Tulsa, Oklahoma thence Powell Bros. Truck Lines, Inc. for the rates from Dallas and Fort Worth, Texas to St. Louis, Missouri.

Single line:

The Chief Freight Lines Company for the rates from Dallas and Fort Worth, Texas to Kansas City, Missouri.

MEMO - COMPILATION DEPT:

Before releasing this to the printer please see S.R.C.
Packing instructions to be changed under proposal C-2410.

Requested by: All Carriers
Date of Request: November 17, 1952
Copy to: Mr. A. J. Tait, General Traffic Manager
Riss & Company, Inc.
15 West 10th St.
Kansas City, Mo.

Approved:
Standing Rate Committee

Mr. R. N. Curley, G. T. M., The Chief Freight Lines Company,
P. O. Box 4049 - Station "A" - Kansas City, Mo. [DJ 11/20]

JB:mó

- 762 -

Counterclaim . Document 92

[1954 OCT 8 PM 2 24]

264 OC 10-8 KC

A J TAIT

REF UR TT 175 FRT OF ALL KINDS KC TO SHREVEPORT AND SAN ANTONIO
WALTER THOMPSON OF LEEWAY ADVISES THAT RATES SUBMITTED HAVE
BEEN AGREED UPON BY GILLETTE STRICKLAND AND LEEWAY THEY
ARE PUBLISHING NEW RATES IN 303 D I SUGGEST WE REQUEST BUREAU TO
INCLUDE OUR ROUTING IN SAME ITEM.

OC E E S 1 PM

Received

Counterclaimant Document 93

bc: Mr. Ken Maguire, Kansas City	Mr. Joe Bayer, Baltimore
Mr. E. E. Pick, Kansas City	Mr. . Vollotte, Dallas
Mr. C. H. Rhodebeck, New York	Mr. W. E. Leimert, NKC
Mr. C. P. Romulo, Jr., Wash., D.C.	Mr. J. K. Newbold, Kansas City
Mr. E. E. Strohfield, Okla. City	Mr. Larry Quinn, Kansas City
Mr. W. L. Shoemaker, NKC	Mr. Ray Severence, Kansas City

RISS & COMPANY, INC.
15 West 10th Street
Kansas City, Missouri

October 18, 1954

Mr. J. D. Lawson, Issuing Officer
Middlewest Motor Freight Bureau, Agent
P. O. Drawer 647
Kansas City 41, Missouri

Subject:

Dear Sir:

Please accept this letter as our proposal and request to add the following in your Tariff No. 303-D:

Item No.	
Commodity:	Freight of all kinds, except explosives
From	Kansas City, Kansas
To	San Antonio, Texas
Rate or Rates	174 cents per cwt. - 30,000 pounds
Minimum Weight	200 cents per cwt. - 20,000 pounds
Routing	Central-Dallas-Riss
Effective Date	October 1, 1954

This proposal is concurred in by carriers named in the routing as evidenced by the enclosed concurrences.

Thank you.

Division - 25% Central
75% Riss

AJT:jp

cc: Mr. Geo. W. Adams, T.M.
Central Freight Lines, Inc.
303 South 12th Street
Waco, Texas

Very truly yours,

RISS & COMPANY, INC.
/s/ A. J. Tait
General Traffic Manager

MIDDLEWEST MOTOR FREIGHT BUREAU, AGENT

Supplement No 101

to

TARIFF NO. 303-D

**Supplements Nos. 81, 82, 83, 85, 86, 88, 90, 91, 92,
93, 94, 95, 96, 97, 98, 99, 100 and 101 contain
all changes**

naming

**LOCAL AND JOINT RATES
(In Cents Per 100 Pounds)**

**for account of
PARTICIPATING CARRIERS SHOWN HEREIN
on
UNITED STATES GOVERNMENT TRAFFIC**

between point in

Arkansas	Kansas	Mississippi	North Dakota	Tennessee (Memphis)
Colorado	Kentucky	Missouri	Ohio	Texas
Illinois	Louisiana	Nebraska	Oklahoma	West Virginia
Indiana	Michigan	New Mexico	Pennsylvania	Wisconsin
Iowa	Minnesota	New York	South Dakota	Wyoming

Subject to Item 5

Applicable only on shipments moving under Government Bill of Lading issued by an agency or department of the United States Government except as otherwise specifically provided in individual items.

This Tariff filed with the Department of the Army Office of the Chief of Transportation, Traffic Control, Washington, D.C., the Department of the Navy, Bureau of Supplies and Accounts, Transportation Division, Motor Carrier Section, Room 1433, Navy Annex, Arlington, Virginia, The Chief of Transportation, Transportation Division, Veterans Administration, Washington 25, D.C. General Services Administration, Washington, D.C. and Federal Facilities Corporation, 811 Vermont Ave., N.W., Washington 25, D.C.

Issued November 18, 1954

**Effective November 24, 1954
(Except as otherwise provided herein)**

**Issued by
J. D. Lawson, Issuing Officer
Post Office Drawer 647
Kansas City 41, Missouri**

PARTICIPATING CARRIERS

Carriers participating in this tariff are as shown in tariff and as amended

Item	Commodity	From (Unload as noted)	To	Route	Rate	Minimum Weight (In lbs.)
REFER TO ITEM 1175-B OF SUPPLEMENT NO 86 AND AS AMENDED AND MADE THE FOLLOWING ADDITIONS						
		Ft. Worth Tex.	Pauline Kan	(95) (96)	200 140 125	10000 20000 30000
				(66)(67) (68)(69) (73)(75) (81)(83) (84)(86) (88)		
			San Antonio Tex.		200	20000 (Note 1)
				(63)(69) (73)(75) (81)(84) (86)(88)	173	30000 (Note 1)
	FREIGHT, ALL KINDS			(63)(66) (67)(70) (72)(74) (83)(85) (87)(89) (91)(97)	168	30000 (Note 1)
		Kansas City (Fairfax) Kan.		(98)(101)		
			Shreveport La.	(63)(66) (67)(70) (72)(74) (83)(85) (87)(89) (91)(97) (98)(104)	191	25000 (Note 1)
				(72)(74) (85)(101)	240	19896 (Note 1)
				(71)(76) (78)(79) (80)(82) (100)	162	30000 (Note 1)
			Slack Air Force Base, Shreveport, La.	(71)(76) (78)(79) (80)(82) (100)	191	25000 (Note 1)
				(76)(80) (82)(100)	240	20000 (Note 1)
		Terre Haute, Ind.		(65)(80) (82)(100)	22000	20000 (Note 2)

PARTICIPATING CARRIERS (continued)

Carriers participating in this tariff are as shown in tariff and as amended

Item	Commodity	From	To	Route	Rate	Minimum Weight (In lbs.)
REFER TO ITEM 1175-B OF SUPPLEMENT NO 86 AND AS AMENDED AND MAKE THE FOLLOWING ADDITIONS						
FREIGHT, ALL KINDS		Kansas City, Mo.	San Antonio, Tex.	(75)	200	20000
					173	(Note 1) 30000
			Shreveport La.	(72)(74)		(Note 1)
				(75)(85)	168	30000
				(97)(96)		(Note 1)
				(72)(74)		
				(85)(97)	191	25000
				(96)		(Note 1)
				(75)	200	20000
				(72)(74)		(note 1)
				(85)	240	19896
						(Note 1)
		Minnea- polis, Minn. St. Paul, Minn.	Joliet Ar- senal, Jol- iet, Ill.	(77)(103)	54	28000 (Note 3)
		Pauline, Kan.	San An- tonio, Tex.	(92)	173	30000

(Concluded on following page)

Item	Commodity	From (Except as Noted)	To	Route	Rate
	FREIGHT ALL KINDS (Concluded)	San Antonio, Tex. Tinker Air Force Base, Midwest City, Okla.	Pauline, Kan. Terre Haute, Ind.	(93) (101)(102) (101)(102)	173 30000 200 20000 150 30000

ROUTES

Amend
Ite-
1175 B
(Sup
86)
(Con
cluded)

- (63) The Arkansas Motor Freight Lines, single line.
- (64) Boyd Truck Lines, Inc. to Kansas City, Mo., thence The Chief Freight Lines Company to Dallas, Tex., thence Merchants Fast Motor Lines
- (65) Byers Transportation Company, Inc. to St. Louis, Mo., thence Motor Freight Corporation
- (66) Byers Transportation Company, Inc. to St. Louis, Mo., thence Southwestern Transportation Company
- (67) The Chief Freight Lines Company to Dallas, Tex., thence Southwestern Transportation Company
- (68) The Chief Freight Lines Company to Dallas, Tex., thence Sunset Motor Lines
- (69) The Chief Freight Lines Company to Dallas, Tex., thence Red Arrow Freight Lines, Inc.
- (70) The Chief Freight Lines Company to Dallas, Tex., thence East Texas Motor Freight Lines
- (71) The Chief Freight Lines Company to Dallas, Tex., thence Red Ball Motor Freight, Inc.
- (72) Gillette Motor Transport, Inc. to Dallas, Tex., thence Herrin Transportation Company
- (73) Gillette Motor Transport, Inc. to Dallas, Tex., thence Brown Express, Red Arrow Freight Lines, Inc. or Strickland Transportation Co. Inc.
- (74) Jones Truck Lines, Inc. to Dallas, Tex., thence Herrin Transportation Company
- (75) Jones Truck Lines, Inc. to Dallas, Tex., thence Central Freight Lines, Inc.
- (76) Jones Truck Lines, Inc. to Little Rock, Ark., thence Couch Motor Lines, Inc.
- (77) Keeshin Motor Express Co. Inc. (An Illinois Corporation) (William P. Drohan and Daniel D. Carmell Trustees) single Line
- (78) Lee Way Motor Freight, Inc. to Dallas, Tex., thence East Texas Motor Freight Lines
- (79) Lee Way Motor Freight, Inc. to Dallas, Tex., thence Southwestern Transportation Company
- (80) Lee Way Motor Freight, Inc. to Dallas, Tex., thence D. C. Hall Transport, Inc.
- (81) Lee Way Motor Freight, Inc. single line
- (82) Lee Way Motor Freight, Inc., to Dallas, Tex., thence Herrin Transportation Company
- (83) Luper Transportation Company of Oklahoma to Dallas, Tex., thence Strickland Transportation Co., Inc.
- (84) Consolidated Forwarding Co., Inc. to Dallas, Tex., thence Central Freight Lines, Inc.
- (85) M & D Motor Freight Lines, Inc. to Dallas, Tex., thence Herrin Transportation Company

(Continued on next page)

ROUTES (Continued)

- (86) Mid Continent Freight Lines, Inc. single line
- (87) Missouri Oklahoma Express, Inc. to Oklahoma City, Oklahoma thence
Houston and North Texas Motor Freight Lines, Inc. to Dallas, Tex.,
thence Strickland Transportation Co., Inc.
- (88) Missouri Oklahoma Express, Inc., to Oklahoma City, Okla., thence
Houston and North Texas Motor Freight Lines, Inc. to Dallas, Tex.,
thence Merchants Fast Motor Lines, Inc. (A Delaware Corporation)
- (89) Missouri Oklahoma Express, Inc. to Tulsa & Oklahoma City, Okla.,
thence D. C. Hall Transport, Inc.
- (90) Motorways, Inc. to St. Louis, Mo., thence Hancock Trucking, Inc.
- (91) Powell Bros. Truck Lines, Inc., to Little Rock, Ark., thence South-
western Transportation Company or Strickland Transportation Co, Inc.
- (92) Riss & Company, Inc., to Dallas, Tex., thence General Freight Lines,
Inc., or Merchants Fast Motor Lines, Inc. (A Delaware Corporation)
- (93) Central Freight Lines, Inc., to Dallas, Tex., thence Riss & Company,
Inc.
- (94) Merchants Fast Motor Lines, Inc., (A Delaware Corporation) to Dallas,
Tex., thence Riss & Company, Inc.
- (95) Riss & Company, Inc., single line
- (96) Southern Plaza Express, Inc., to Kansas City, Mo., thence Graham
Ship by Truck Co., Ship by Truck Company d/b/a
- (97) Southwest Freight Lines, Inc., to El Dorado, Ark., thence Herrin
Transportation Company
- (98) Southwest Freight Lines, Inc., to
Ark., thence East Texas Motor Freight Lines
- (99) Toedebusch Transfer Inc., to St. Louis, Mo., thence Lovelace
Truck Service, Inc.
- (100) Toedebusch Transfer, Inc., to St. Louis, Mo., thence Strickland
Transportation Co. Inc.
- (101) Consolidated Forwarding Co., Inc. to St. Louis, Mo., thence Lovelace
Truck Service, Inc.
- (102) Viking Freight Company single line
- (103) United Shipping Co., to Chicago, Ill., thence
Trucking, Inc.
- (104) Consolidated Forwarding Co., Inc., to
Tex., thence Herrin Transportation Company

NOTE 1 Minimum weight per vehicle used
2 Rate is in cents per vehicle used
3 Minimum weight per trailer of not less than 1400 cubic feet
capacity

EFFECTIVE November 24, 1954 except as
noted

EFFECTIVE October 8, 1954
EFFECTIVE October 15, 1954
EFFECTIVE October 18, 1954
EFFECTIVE October 21, 1954
EFFECTIVE October 22, 1954

EFFECTIVE October 25, 1954

EFFECTIVE October 26, 1954
EFFECTIVE November 1, 1954
EFFECTIVE November 4, 1954
EFFECTIVE November 6, 1954
EFFECTIVE November 9, 1954
EFFECTIVE November 17, 1954

(PC 8006 8018 8019 8020 8030 8031 8041 8045 8048 8069 8075 8079 8084 8088 8091
8093 8096 8097 8099 8100 8115 8122 8124 8130 8131 8133 8134 8140 8152 8174
8176 8177 8207 8210 8217 8219 8220 8275 8335

For explanation of abbreviations see page 3 of Supplement No. 86

ROCKY MOUNTAIN MOTOR TARIFF BUREAU, INC.
1600 LOGAN STREET
DENVER 3, COLORADO

May 21, 1954

BULLETIN SERVICE

Bulletin No. QR-50

The Bureau has been instructed to publish new government quotation rates and provisions as indicated herein.

The following requested rates and provisions have been published under special publication in U. S. Government Quotation No. 43-C.

Request No.	Provisions			
A-426	Add the following rates in item 600, effective April 15, 1954:			
	From	To	Rates	Route
	Badger	[Illegible]	10M 647	6
	Ordnance	Fort McArthur, San Ploho, Calif.	647	7
	Works,	Mar Inlake, Calif.	647	8
	Badger,	Naval Ordnance Depot,		
	Wisc.	Ariz.	551	5
		Naval Ammunition Depot,		
		Nevada	551	9
		Ogdon Arsenal, Arsenal, Utah	451	10
		Port Chicago, Calif.	641	8
		Seal Beach, Calif.	641	7
		Sierra Ordnance Depot,		
		Herlong, Calif.	641	11
		Ordnance Depot,		
		Utah	451	12
		Wingate Ordnance Depot,		
		Wingate, N.M.	520	13

Route 5:
D105-W25-0J5.

Route 6:
I50-A210 W25 Q15.
I50-G12-W G15
I50-H165-G4-W25-GFS.

Route 7:

(Illegible)

The Following requested rates and provisions will be published on Revised Pages to U. S. Government Quotation No. 43-C to be issued June 1, 1954:

Request No.	Provisions				
A-432	Add the following provisions to Item 1170:				
	Between	And	RATES		ROUTE
			20M	30M	
		Bayonne, N. J.	756	529	1
		Brooklyn, N. Y.	756	529	1
	Kirkland, Wash.	Long Island City, N. Y.	756	529	1
	Sand Point	Newark, N. J.	756	529	1
	Naval Air	New York, N. Y.	756	529	1
	Station, Wash.	Nixon, N. J.	756	529	1
		South Schenectady, N. Y.	756	529	1
	Route 1: D105.				
A-433	Add the following provisions to Item 2660, Effective May 6, 1954:				
	From	To	RATES		ROUTE
			30M		
		Joliet Arsenal, Joliet, Ill.	675		1
		Kingsbury Ordnance Depot, Ind.	695		1
		Raritan Arsenal, Nixon, N. J.	735		1
	Aerojet	Ravenna Arsenal,			
	Engineering	Ravenna, Ohio	715		1
	Corporation	Pine Bluff, Ark.	483		2
	near Nimbus, Calif.	Sunflower Ordnance Works, Desota, Kan.	554		1
		Kansas Ordnance Plant, Parsons, Kans.	517		1
		Savanna Ordnance Depot, Ill.	629		1
	Route 1:		Route 2:		
	C495-P5-R185.		C495-P5-R185-A230.		

Counterclaim . Document 96

RM 6-10-54

15 W. 10th - Kansas City, Mo.
June 3, 1954

Mr. Tom Olson
Rocky Mountain Motor Tariff Bureau
1600 Logan Street
Denver 3, Colorado

File

Dear Mr. Olson:

This has reference to your Bulletin No. OR-53 dated May 21 regarding rates which have been published under special publication in Quotation Tariff 43-C.

Under Item 600 we desire to establish routes from Hawthorne, Nev. to Iowa Ordnance Plant, Burlington, Ia. under Route 167, from Hawthorne, Nev. to Joliet Arsenal, Ill. under Route 169 and from Hawthorne, Nev. to Eudora, Kans. under Route 168.

In each instance the route will be Ashworth-Riss with point of interchange Denver, Colo.

We are forwarding a copy of this letter to Ashworth with the request that they furnish you with their concurrence.

Very truly yours,

RISS & COMPANY, INC.

James K. Newbold, Jr.
Director of Traffic

JKN:mp

cc: Mr. Clyde Ashworth,
Ashworth Transfer Company
656 S 2nd West
Salt Lake City, Utah

Counterclaim Document 97
Page one

MIDDLE ATLANTIC CONFERENCE
2111 E Street, N. W.
Washington 7, D. C.

Received

PUBLICATION NOTICE NO. 50

GOVERNMENT RATE SHEETS

February 4, 1954

File: G-188-H

(Tariff 5-E Carriers)

We have been instructed by an interested member carrier to publish a Government Rate Sheet applicable for the account of the U. S. Post Office Department as follows:

Commodity

Printing paper, in boxes, bundles,
rolls or on skids

<u>From</u>	<u>To</u>	<u>Rate</u>	<u>Min. T. L. Rate</u>
Luke, Md.	Washington, D. C.	26¢ cwt	20,000 lbs.

The request was made to meet the rate and minimum weight published in Decker's NF-I. C. C. No. 12. Publication is being made accordingly for all Tariff 5-E carriers effective February 2, 1954.

The Post Office Department has been so advised by telegram on February 2, 1954.

(Tariff 1-I Carriers)

There is on file with the Department of the Army a Supplement to an individual motor carrier quotation reading as follows:

Commodity

Ammunition as listed in Item 130,
MAC Tariff 10-J.

<u>From</u>	<u>To</u>	<u>Rating</u>	<u>Minimum weight</u>
Points in New Jersey	Points in New Jersey	Class 65	27,000 pounds

Counterclaim Document 97
Page two

The class 65 in this supplement anticipates the use of 1950 rates published by Metropolitan Motor Carriers Conference.

We have class 65 on the same list of commodities in Item 10, Government Rate Sheet No. 450 but the class 65 anticipates the use of M. A. C. Tariff 1-I rates.

[Page 7] [Publication Notice No. 50]

<u>SECTION A</u>	<u>SECTION B</u>
Where the applicable Truck-load or Volume rating in NMFC A-1, East, or Tariff NMF-ICC No. 16 is or between:	The following rating and Truck-load Minimum Weights will apply:

CLASSES	RATING (PERCENTAGES OF 1ST CLASS)	TRUCKLOAD MINIMUM WEIGHTS (in pounds)
100 to 70 inclusive	65	16,000
	60	19,000
	55	28,000
65 to 55 inclusive	50	20,000
	47	22,000
	44	28,000
52 to 50 inclusive	43	20,000
	40	23,000
	37	30,000
45	37	23,000
	36	26,000
	35	30,000
40 or lower	34	23,000
	33	29,000

This is for your information.

(Tariff 2-E and 7-E Carriers)

Please refer to Publication Notice 45, January 21, 1954 as it regards an individual motor carrier quotation.

Counterclaim Document 97
Page three

Commodity

Tools, vehicle parts, machinery, etc.

<u>Between</u>	<u>To</u>	<u>Rate</u>	<u>Min. T. L. Weight</u>
Aberdeen Proving Ground, Md.	Culbertson, Pa.	61¢ cwt	23,000 lbs.

We have now been instructed by an interested member carrier to meet this quotation. Therefore publication will proceed accordingly for the account of all Tariff 2-E and 7-E Carriers.

If you do not desire participation for your account please advise promptly upon receipt of this notice.

/s/ E. D. Rockey, Manager

E. D. Rockey, Manager
Government Traffic Dept.

EDR:mbb

Counterclaim. Document 98
Page one

SOUTHWESTERN MOTOR FREIGHT BUREAU, INC.
4112 San Jacinto
Dallas 4, Texas

December 15, 1952

In reply please refer to file
G-1

To Participating Carriers
Tariff No. 1000-I

Gentlemen:

We are in receipt of copies of individually filed Section 22
tenders to the Department of the Army, Navy or Air Force, as follows:

Commodity	Between	And	Min. Wt.	Rate Per Cwt.
1. High Explosives, Ammunition and/or Fireworks	Naval Ammunition Depot, Savanna, Oklahoma	San Jacinto Ordnance Depot, near Houston, Texas	30,000 lbs.	1.78
2. High Explosives, Ammunition and/or Fireworks	Longhorn Ord- nance Depot (Karnack), Texas	Pueblo Ord- nance Depot (Avondale) Colorado	30,000 lbs.	2.98
3. Ammunition and/or Explosives and/or Fireworks	Pueblo Ordnance Depot (Avondale) Colorado	Ft. Bliss, Texas	30,000 lbs.	2.26
4. Wheeled Vehicles, All Kinds	Red River Arsenal, Defense Texas	Galveston, Texas	20,000 lbs.	.95

This is for your information and if there is any action you would like taken in
connection with Tariff 1000, please contact this office.

Yours very truly,

/s/ H. G. Thompson

H. G. Thompson

Received

HGT:MD

Counterclaim Document 99

[12-25]

December 18, 1952

Mr. Larry Quinn - Kansas City
Mr. C. H. Rhodebeck - New York
Mr. M. D. Robeson - Kansas City

Gentlemen:

The Southwestern Motor Freight Bureau, Inc., under date of December 15, 1952, File G-1, advises that the following tenders have been filed with the Departments of the Army, Navy, or Air Force:

<u>Commodity</u>	<u>Between</u>	<u>And</u>	<u>Min. Wt.</u>	<u>Rate per Cwt.</u>
1. High Explosives, Ammunition and/or Fireworks	Naval Ammunition Depot, Savenna, Oklahoma	San Jacinto Ordnance Depot, near Houston, Texas	30,000 lbs.	[1.90 Flag] 1.78
2. High Explosives, Ammunition and/or Fireworks	Longhorn Ord- nance Depot (Larnack), Texas	Pueblo Ord- nance Depot (Avondale) Colorado	30,000 lbs.	[2.98 OK] 2.98
3. Ammunition and/or Explosives and/or Fireworks	Pueblo Ordnance Depot (Avondale) Colorado	Ft. Bliss, Texas	30,000 lbs.	[2.43 Flag] 2.26
4. Wheeled Vehicles, All Kinds	Red River Arsenal, Defense, Texas	Galveston, Texas	20,000 lbs.	.95

Will you please advise if you are interested in publishing similar tenders in Tariff No. 1000-I? If so, kindly advise carriers who will join with Riss, points of interchange, and divisions to apply.

Thank you.

A. J. Tait

AJT:as

cc: Mr. R. B. Riss - Building

Counterclaim Document 100

December 24, 1952

Mr. H. G. Thompson
Southwestern Motor Freight Bureau, Inc.
4112 San Jacinto
Dallas 4, Texas

[12-1-52]
[1-9-53]
[1-14-53]
[CK.Publication]

Dear Mr. Thompson:

Please be referred to your letter of December 15, 1952, File:
G-1, Captioned "To Participating Carriers Tariff No. 1000-I."

Riss & Company, Inc. wishes to participate in the publication
of the rate of \$2.98 per cwt., volume minimum weight 30,000 pounds on
high explosives, ammunition and/or fireworks moving between Longhorn
Ordnance Depot (Karnack), Texas and Pueblo Ordnance Depot (Avondale),
Colorado.

There is no desire to participate in any of the other proposals
numbered 1, 3, and 4.

Very truly yours,
RISS & COMPANY, INC.

A. J. Tait
General Traffic Manager

AJT:as

bcc: C. H. Rhodebeck, New York
C. P. Romylo, Jr., Washington, D. C.
Joe Beyer, Baltimore
J. T. Newbold, Kansas City
D. C. Stone, Kansas City
L. L. Stearns, N. Kansas City.
Larry Quinn, Kansas City
Ray Severance, N. Kansas City
Glenn Smith, N. Kansas City
M. D. Robeson, Kansas City
R. Sullivan, Pueblo

[Item 138 - sup 18 pp 12-24-52
a. Longhorn - Pueblo 298
(1) b. Savanna-San J. 178
(1) should not be published
for acct. of Riss & Co.,
Inc.]

Counterclaim Document 101

SOUTHWESTERN MOTOR FREIGHT BUREAU, INC.
4112 San Jacinto
Dallas 4, Texas

Received

November 14, 1955

In reply please refer to file
G-1

[(1) OK J.A. Reardon 11-15 55]

U R G E N T

PARTICIPATING CARRIERS, TARIFF NO. 1000

Gentlemen:

We are in receipt of instructions from a participating carrier in Tariff 1000-N to publish a rating of Column 55, plus X-162, X-166, X-168 and X-175, to (1) apply on Ammunition, Explosives and/or Fireworks,, Minimum Weight 60,000 pounds, to become effective Friday, November 18, 1955.

This will be accomplished by amending Item 175 and Item 950 of the tariff. Justification offered is the railroads have made this reduction in this territory, in EC-WTA Section 22 Quotation No. 76, effective October 20, 1955. If there is any carrier who does not wish this amendment made for his account, he should advise this office not later than Wednesday, November 16, 1955. Otherwise, publication will be made for account of all carriers.

Yours very truly,

/s/ J. D. Hughett,

J. D. Hughett,
General Manager

HGT:ls

Counterclaim Document 102
Page one

SOUTHWESTERN MOTOR FREIGHT BUREAU, INC.
4112 SAN JACINTO STREET
DALLAS 4, TEXAS
JULY 16, 1957

FILE: G-1

PARTICIPATING CARRIERS - TARIFF NO. 1000

We are in receipt of information on the following individually filed Section 22 Tenders.

No. 17-57 Gillette Motor Transport, Inc. EFF. 6-11-57 TO: USA USN
USAF USMC

BET. McAlester, Haywood or Savanna, Okla. AND San Jacinto O.D.,
near Houston, Texas.

RATE: \$1.10 cwt on first 40M; 98¢ cwt on all additional wt. shipped
same date.

MIN. WT.: 30M per veh. used.

AMMO., EXPLO. a/o FIREWORKS.

NO. 410 Lee Way Motor Frt.; Keystone Truck Lines & Navajo Freight Lines,
Inc.

EFF.: 6/13/57 TO: D/D

BET. N.A.D., McAlester (Savanna, Haywood), Okla. AND Wingate Ord.
Dep., New Mex.

RATE: 271¢ cwt 30M Vol. AMMO., EXPLO. a/o F. W.

NO. 117 Curry Motor Freight Lines, Inc. EFF. 6/20/57 TO: USAF
FROM: Lubbock Tex., Reese AFB, Hurlwood, Tex.

TO: Kelly AFB, Brooks AFB, Kelly AFB, San Antonio, Texas

RATE: \$2.54 cwt - A.Q.; \$1.48 cwt 20M Min.

COMMODITY: Aircraft engines, int. comb., engines & component parts
thereof.

Counterclaim Document 102
Page two

NO. 189 Campbell "66" Express; K. K. Trucking Co. & Red Ball Transfer Co.
EFF. 4/4/57 ACCEPTED: 6/28/57 TO: D/D [Item 410B-Sup 36-
SW Tariff 1000]
FROM: Avondale, Colo. TO: New Orleans, La. RATE: 268¢ 30M T/L
COMMODITY: Freight, all kinds, except articles described in Item 210 of
Rocky Mt. Mtr. Tar. Bur., Inc., Tar. No. 51.

NO. 1-57 Keystone Truck Lines & Red Ball Motor Freight EFF: 6/24/57
TO: U.S. Govt. BET. NAD, McAlester, Savanna, Haywood, Okla.,
AND Red River Ars., Defense, Tex., or Lone Star Ord.,
Defense, Tex. - 82¢ cwt 30M. Min. per veh. used. AMMO. -
EXPLO. -FIREWORKS.

NO. 11-57 T.I.M.E., INC.; Keystone Truck Lines & Navajo Freight Lines
EFF. 6/13/57 TO: [illegible] Savanna, Okla., TO: Wingate, O.W., McCune,
N.M. 271¢ 30 M - AMMO - EXPLO

Received

Counterclaim
Page one

Document 103

MIDDLEWEST MOTOR FREIGHT BUREAU, P.O. Drawer No. 647, Kansas City, 41,
Missouri
Boyd Truck Lines, Inc.,
509 West 5th Street, Kansas City, Missouri.
Byers Transportation Company, Inc.,
901 Washington, Kansas City, Missouri.
Knaus Truck Lines, Inc.,
801 E. 17th Street, Kansas City, Missouri.
Toedebusch Transfer, Inc.,
926 Cass Avenue, St. Louis 6, Missouri
Messler Cartage Co.,
1428 W. 9th Street, Kansas City 7, Missouri
Inter City Freight Lines,
120 E. Lexington, Independence, Missouri
M & D Motor Freight Lines, Inc.
Box 72 - 1019 Walnut, Duncan, Oklahoma
Middlewest Freightways, Inc.,
527 South Theresa Ave., St. Louis, Missouri
Missouri-Arkansas Transportation Co.,
1300 W. 10th Street, Joplin, Missouri
Riss & Company, Inc.,
5th Floor Riss Bldg., 15 W. 10th Street, Kansas City 6, Mo.
Southwest Freight Lines, Inc.,
401 E. Missouri, Kansas City, Missouri
Virgil Freight Service,
901 Admiral Blvd., Kansas City, Missouri
Wheelock Bros., Inc.
700 East Third Street, Kansas City, Missouri
Yellow Transit Freight Lines,
P. O. Box 7105, Dallas, Texas

April 7, 1952 File
File: Proposal C-484-C5 44
cc: Tariff 303-B

Gentlemen:

Each of you are participants in the provisions of Item 368-D, Page 9 of Supplement 9 to Tariff 303-B, naming rate of 83 cents per 100 pounds, minimum weight 30,000 pounds on Cartridge Clips, from Wichita, Kansas to Lake City, Missouri.

We hold instructions to publish rate of 80 cents per 100 pounds, minimum weight 30,000 pounds, in lieu of present rate because of an individual quotation that we hold in our file that shows this rate.

In order that all the carriers in the item may be on a competitive basis the rate of 80 cents per 100 pounds, minimum weight 30,000 pounds, will be published

Counterclaim Document 103
Page two

for account of all carriers unless within ten (10) days of this letter we are notified in writing that the present rate of 83 cents, minimum 30,000 pounds is to be retained for your account.

Cordially yours,

/s/ J. D. Lawson

J. D. Lawson, General Manager

UNION FREIGHTWAYS
720 Leavenworth Street
Omaha 8, Nebraska

November 19, 1952

Middlewest Motor Freight Bureau
P. O. Drawer 647
Kansas City 41, Missouri

Gentlemen:

We refer you to Tariff No. 303-C, Item 140, published for the joint account of Riss & Company, Inc., and Union Freightways, covering "Ammunition, viz: Cartridges, small arms, blank or loaded, in boxes" from Sioux Ordnance Depot, near Sidney, Nebraska to Pueblo Ordnance Depot near Pueblo, Colorado.

This Government rate tender was published at a rate of 108-cents per cwt., minimum 30,000 pounds. At the present time Watson Bros. Transportation Company have a quotation, their No. 502, carrying the same rate. We understand that this Watson quotation No. 502 is to be cancelled, effective as of January 18, 1953, and that the tender will be published in Tariff No. 303-C based on a rate nine percent (9%) higher than the 108-cent rate presently in effect.

We wish to take this opportunity to request publication of this quotation for our account in joint routing with Riss & Company, Inc. on the nine percent (9%) increase base, effective on the same date of publication for Watson Bros. Transportation Co.

We are forwarding a copy of this letter to Mr. Larry Quinn, Riss & Company, Inc., requesting that they allow you a letter of their concurrence to this amendment.

Yours very truly,
UNION FREIGHTWAYS

F. W. Kelsey,
Ass't. General Traffic Manager

FWK/jk

Counterclaim Document 105

[Check Publication]

December 5, 1952

Mr. J. D. Lawson, General Manager
Middlewest Motor Freight Bureau
P. O. Drawer 647
Kansas City, Missouri

[See letter Dec 23 1952
to MMFB Proposal C-695]

Dear Mr. Lawson:

Mr. F. W. Kelsey, Assistant General Traffic Manager of Union Freightways, Omaha, Nebraska wrote you on November 19, 1952, requesting that the rate of \$1.08 in Item 140 of your Tariff No. 303-C be increased 9 per cent.

Riss & Company, Inc. concurs in this increase under the conditions set forth in Mr. Kelsey's letter.

Very truly yours,
RISS & COMPANY, INC.
/s/ A. J. Tait
A. J. Tait
General Traffic Manager

AJT:

cc: Mr. F. W. Kelsey
Assistant General Traffic Manager
Union Freightways
720 Leavenworth Street
Omaha, Nebraska

bcc: Mr. Larry Quinn

RISS & COMPANY, INC.

To:

Name Mr. Larry Quinn, Date March 10, 1953
Terminal Kansas City, Missouri Terminal Kansas City, Mo.

The Middlewest Motor Freight Bureau, by its Bulletin No. 25, File: C5.44, dated February 25, 1953, advises of the following revisions in Tariff 303-C:

Ammunition and/or explosives and/or fireworks, between Hastings, Neb., and Naval Ammunition Supply Depot, near Savanna, Oklahoma, rate 175 cents, minimum 30,000 pounds, route joint line: Yellow Transit Freight Lines, Inc., with Union Freightways, Union Transfer Co. d/b/a, interchange point Kansas City, Missouri. Publish to be effective February 19, 1953. (C-2866)

Carrier quotations filed:

25 "AMMUNITION EXPLOSIVE AND/OR FIREWORKS AS DESCRIBED IN THE NATIONAL MOTOR FREIGHT CLASSIFICATION." From Cincinnati, Ohio to Kansas Ordnance, Parsons, Kansas, rate [OK] 225¢ per 100 pounds, minimum 30,000 pounds, BY: Hayes Freight Lines, and Campbell "66" Express, Inc. ck 613

29 "AMMUNITION, EXPLOSIVES, AND/OR AMMUNITION, EXPLOSIVES, INCENDIARY, GAS, SMOKE OR TEAR PRODUCING, AS DESCRIBED UNDER THAT HEADING IN NMFC. AMMUNITION, [OK] NON-EXPLOSIVE, INCENDIARY, GAS, SMOKE OR TEAR PRO- [illegible] DUCING, AS DESCRIBED UNDER THAT HEADING IN NMFC. FIREWORKS, AS DESCRIBED UNDER THAT HEADING IN NMFC. From DeSoto, Kansas, Shumaker, Arkansas, Rate \$1.92 per cwt. minimum 30,000 pounds. BY: Watson Bros. and Luper Transportation.

Counterclaim
Page two

Document 106

³⁰"AMMUNITION AND/OR EXPLOSIVES AND/OR FIREWORKS."

Between points served by Watson Bros. and Longhorn Ordnance Works, Karnack, Texas, basis 75 and 65% of 1st class NMFC basis plus any applicable surcharge, (see note), minimum 20,000 and 30,000 pounds. NOTE - If at carriers request because of state weight limitations or because of size of equipment furnished, or for carriers convenience less than 30,000 pounds but over 20,000 pounds in loaded 65% of 1st class shall apply to actual weight loaded. BY: Watson Bros. and Lee Way Transportation. [NO]

The above information is given you for your study and such action as you deem advisable.

/s/ A. J. Tait

A. J. Tait

AJT:as

Riss & Co., Inc.
Mar. 11, 1953

File
[Jim-Interested? AJT 10/7/54]

Counterclaim Document 107
Page one

ROCKY MOUNTAIN MOTOR TARIFF BUREAU, INC.
1600 Logan Street
Denver 3, Colorado

October 5, 1954

Received

To all participating carriers in
U. S. Government Quotation No. 43-C:

The bureau is in receipt of the following telegraphic request from
the Bureau of Supplies and Accounts, Code H211, Department of the Navy,
Washington, D. C.:

"012227Z. NAVY HAS IMMEDIATE MOVEMENT APPROXIMATELY
1700 TONS AMMUNITION LINKS, STEEL, ITEM 73300, NMFC12,
CHICAGO, ILLINOIS AND MANITOWOC, WISCONSIN TO PACIFIC
COAST POINTS, I E 260 TONS SEAL BEACH AND 500 TONS PORT
CHICAGO, CALIFORNIA AND 940 TONS TO HAWTHORNE,
NEVADA. CURRENT CLASS 45 RATE IS 542 CENTS TO SEAL
BEACH AND PORT CHICAGO AND 443 CENTS TO HAWTHORNE,
VOLUME MINIMUM 20000 POUNDS RMTB TARIFF 5-A. MA-
TERIAL PACKED STEEL BOXES, IN FIBREBOARD INNER
CONTAINERS, GROSS WEIGHT 72 POUNDS, LOADING IN EXCESS
30000 POUNDS STANDARD 30 FOOT TRAILER. COMPARABLE
COMMODITIES SUCH AS FITTINGS, CABLE OR GUY WIRE, VIZ;
CHAIN CLAMPS, CLIPS, SHACKLES, SUBJECT TO A RAIL COM-
MODITY RATE OF 170.20 CENTS, X175 INCLUDED, TO SEAL
BEACH AND PORT CHICAGO, CALIFORNIA AND 170.20 CENTS
PLUS ARBITRARY OR 194.35 CENTS, X175 INCLUDED, TO
HAWTHORNE, NEVADA, MINIMUM 60000 POUNDS PER ITEM
4505 TCFB 1-C WHICH RATE CONSIDERED EQUITABLE FOR

[68¢]
[69 D
N9]

Counterclaim Document 107
Page two

ABOVE MOVEMENT. THEREFORE, REQUEST IMMEDIATE CONSIDERATION RATE ADJUSTMENT REFLECTING RATES NOT IN EXCESS 170.20 CENTS TO SEAL BEACH AND PORT CHICAGO, CALIFORNIA AND 194.35 TO HAWTHORNE, NEVADA, X175 INCLUDED, VOLUME MINIMUM 30000 POUNDS TO COVER. RIGHTS RESERVED TO REJECT ANY OR ALL RATES OFFERED AND TO DISTRIBUTE TONNAGE EQUITABLY AMONG CARRIERS COMMENSURATE WITH NEEDS OF SERVICE. WIRE REPLY REQUESTED."

If your company desires to participate in these rates, you should so notify the bureau, giving complete information as to the routing, and have all carriers involved authorize their participation in order that we may notify the Department of the Navy whether or not any carriers desire to protect the requested rate.

Respectfully,

ROCKY MOUNTAIN MOTOR TARIFF
BUR.

Counterclaim Document 108

MIDDLEWEST MOTOR FREIGHT BUREAU
Post Office Drawer No. 947
Kansas City 10, Missouri

Received

[File - No good]

April 8, 1952

File: Proposal C-490 -C5.44

cy: Proposal C-431

cy: Proposal C-386

cy: Tariff 303-B

TO THE CHIEF TRAFFIC OFFICER OF
PARTICIPATING CARRIERS IN MIDDLE-
WEST TARIFFS NOS. 4, 6, 14, 16, 25,
27, 35, 45, 1011, 1027, 1036, 1037,
1230, 1231 and 1232.

GENTLEMEN:

For your information we have received telegram dated March 29, 1952, to
establish the following quotation for the Army and Navy Department:

"ARMY AND NAVY REQUEST ESTABLISHMENT RATING EQUIVALENT TO
RAIL EXCEPTIONS COLUMN 35 VOLUME MINIMUM 30,000 POUNDS
EFFECTIVE IMMEDIATELY ON PROJECTILES NOI, IRON OR STEEL, WITHIN
THE TERRITORIAL FUNCTION OF THE MIDDLEWEST MOTOR FREIGHT
BUREAU-VOLUMINOUS MOVEMENT ANTICIPATED."

Any member carrier desiring to join in this quotation, may do so by com-
municating with this office on or before April 18, 1952, and publication will
be made in our Tariff No. 303-B. If joint service is involved, concurrence
from your connecting carrier and name of interchange points are required
and must accompany publication instructions. All communications must
refer to file Proposal C-490.

JB/fts

Cordially yours,

/s/ J. D. Lawson,
J. D. Lawson,
General Manager

Counterclaim Document 109

No. 218 - 7-22-52

Called E. C. Funk.

R M T B - Denver

re Sec. 22 Tenders

increased 6%

Watson Bros.

Navajo holding back

Somlyo - Thickett - not going to
take - afraid of each other -
Trust each other - Publish Sups

See 246) called
) Power
) Funk
) 7/28/52
) same info

No. 254 - 7-28-52

Tracy Power - Denver

also E. C. Funk - Long distance phone

Matter of increases - sec. 22 - 6% - same as

7-22-52 - see No. 218 - carriers going along as

agreed Denver - May, 1952.

Info on 253-254 given MPH - 7-29-52

(
(Tender
(122-A-51
(changed -

No. 463 - 9-2-52

To Chicago to attend RMMTB Trans C meetings also Divisions - Chicago -
St. Louis Interchange - Eastern Seaboard Trans C Traffic-Meetings Sept. 3
thru Sept. 5, 1952. Retd to K. C. Mo. 8:00 p.m. 9-5-52

Counterclaim Document 110

Mr. C. H. Rhodebeck
New York City

August 8, 1952
Kansas City, Missouri

Dear Cal:

Please be advised that I have today voted to increase all rates in Rocky Mountain Motor Tariff Bureau, Inc., U. S. Government quotations numbered 1-C and 43-A, 15 per cent in lieu of the 6 per cent now presently in effect but with the proviso that the increase will not be applied for the account of Riss & Company, Inc. unless the increase is taken by all carriers.

/s/ M. P. Hester

AJT:as

8-19-52

[CHR - Wash., D.C. discussed - Navy not favor - will write & confirm -

AJT]

Counterclaim Document 111

RISS & COMPANY, INC,

TELEGRAM

Rush

No. 227

Date 7/30/52

TO C. H. RHODEBECK - NEW YORK CC R. B. Riss - RISS BLDG.
CARLOS P. ROMULO - WASHINGTON,
D. C.

REFERRING CONVERSATION WITH TAIT RELATIVE UNION FREIGHTWAYS. TALKED TO BOB HILL, OMAHA, WHO SAYS THAT THEY HAVE INCREASED MOST OF THE QUOTATIONS AND ARE INCREASING ALL QUOTATIONS THE SIX PERCENT. EVERY ATTEMPT WILL BE MADE TO HAVE ALL OF THEM EFFECTIVE BY AUGUST 1. HE FURTHER STATED THAT THEY DID NOT KEEP MR. YATES INFORMED OF EVERYTHING. WE HAVE RUN DOWN EVERY SPECIFIC INSTANCE YOU HAVE CALLED TO OUR ATTENTION AND FIND THE INCREASES ARE BEING PUBLISHED TO BECOME EFFECTIVE AUGUST 1. SO FAR NO CARRIER HAS INDICATED OTHERWISE. WE CERTAINLY DO NOT WANT TO UPSET THE APPLE CART NOW.

[41]

Signed /s/ M. P. HESTER/kb Time 10:30

Counterclaim Document 112

RISS & COMPANY, INC.

INTER-OFFICE CORRESPONDENCE

To:

From:

Name Al

Date July 27, 1952

Terminal

Terminal

INCREASES RMTB SECTION " " QUOT'NS.

I am afraid that Cal Rhodebeck has convinced Bob that we should not retain the 6% increases in RM Section 22 quotations.

I wish that you would call War Thickett or some one at Watsons Monday A. M. early and find out if they have increased their Quot'ns. Also call Tracy Power and determine to what extent any one has failed to take the increases.

If - anyone has failed to take them, then tell Tracy that we will cancel the increased quotations we have filed. I wish that Tracy would talk to Bob Riss if you feel that everyone will go along.

I should stay over Monday but Mrs. Hester isn't well and I promised that I would be back Sunday night so that we could continue on our way home first thing Monday A. M.

I may call you from somewhere along the line about 11 A. M. to Noon. if I can find a good town around that time.

M. P. H.

[42]

Counterclaim Document 113
Page one

RISS & COMPANY, INC. INTER-OFFICE CORRESPONDENCE

TO:

FROM:

Name Mr. A. J. Tait Date May 27, 1952

Terminal Kansas City, Mo. Terminal Kansas City, Mo.

Subject Transcontinental Section 22 Quotations
Rocky Mountain Quotation Tariff 43-A

Monday, May 26th, 1952 the carriers met in Denver to discuss the general increase and in addition to discuss an increase in the Bureau's U. S. Government Quotation Sheet No. 43-A.

Inasmuch as misunderstanding occurred, I could not attend the meeting in Denver, therefore, I phoned Keith Alexnader to be present and represent. Riss & Company without commitments. The proceeding progressed very nicely; the carriers agreed to a 6 percent increase in the Quotation Tariff No. 43-A, subject to rail rates as a maximum, the increase to be published to become effective August 1st, 1952. All carriers agreed to make similar increases in their individual Section 22 Quotations, effective on August 1st, 1952 and following that effective date to transfer all individual Quotations to Tariff 43-A.

This subject was discussed with Mr. R. B. Riss and following the discussion he approved the plan, and the Bureau was instructed that Riss & Company would go along with the program. [43-A]

Will you therefore please arrange to reissue your Section 22 Quotations increasing them 6 percent with the rail rate or rail quotation as a maximum to become effective August 1st, 1952 and to file with the Rocky Mountain Bureau a copy of the increased quotation so that it can be absorbed into the Bureau issue and that we can issue a cancellation of our Section 22 Quotation concurrently with the date of transfer to the Bureau issue?

[43-A Trans C
Eff. 2 B
3 C
Illegible]

Counterclaim Document 113
Page two

I discussed this feature very carefully with Tracy Power, who informed me that every indication that the carriers were sincere; that every carrier would carry out their share of the program, that everything hinged on what Riss would do. After discussing the matter with Mr. Riss, I informed Tracy that we would go along with the program. Therefore, let there be no hitch on our part. In the event that we find that some carrier has not kept his promise, I am quite sure the Bureau will immediately issue a Quotation in 43-A to meet the competitive situation. Copy of this letter is being furnished Mr. Rhodebeck and Mr. Strohfield and I want to assure them that they can assure the Military that we will stand for no Quotation below ours if we find that some carrier has not kept his part of the program, a Quotation will be issued by the Bureau, post dated back to the August 1st date line so that the Military will be protected.

/s/ M. P. Hester

M. P. Hester

MPH/pc

cc:	Mr. E. E. Strohfield, Okla. City	Mr. R. B. Riss, KC
	Mr. C. H. Rhodebeck, New York	Mr. Larry Quinn, N KC
	Mr. D. C. Stone, KC	Mr. L. L. Stearns, KC

Counterclaim Document
114/1

July 1, 1952

Mr. K. Tracy Power
General Manager
Rocky Mountain Motor Tariff Bureau
1600 Logan Street
Denver, Colorado

Dear Tracy:

Please find enclosed herewith a copy of each of the U. S. Government Quotations or Rate Tenders filed by this company with the Departments of the Army, Navy, and Air Force jointly or severally. These Government Quotations and Tenders are to be published in your U. S. Government Quotation No. 43-A or its contemporary, if it has one.

The quotations are divided into two parts. One part covers quotations and tenders providing specific rates on specific commodities moving "between and", "from and to" points served by Riss locally and jointly. The second part provides quotations that are multiple of the first class rate and applicable chiefly in connection with movements of explosives "between and" "from and to" points served by Riss locally and jointly.

Those quotations and tenders falling in the second part are to be published in your quotation within the limits of your tariff publication. For example, Riss & Company Quotation 2-C applies between all points by Riss & Company. This quotation embraces many tariff bureau areas, but your quotation is to be confined to the area covered by tariffs issued by your bureau.

Just as a suggestion to cover the tariff matter as to the applicable rates, you may wish to pattern a general item after Item 5 in Middlewest Tariff 303-B. It provides local and joint rates on Government traffic.

A copy of this letter is being sent to all carriers who participate with Riss & Company in the quotation enumerated, requesting that they give you their concurrence in each quotation as is necessary.

Will you please advise me when this shift to the Quotation 43-A will be made effective so that the quotations and tenders referred to herein may be cancelled on the date that they are to become effective in your Quotation No. 43-A. Some of the quotations and tenders bear a sixty day cancellation provision. While changing these quotations and tenders from an individual publication to an agency publication involves neither an increase nor a reduction, we may be held to the cancellation provision that has been agreed upon. It will be appreciated if you can determine, or if you know, whether or not there would be any objections to cancelling the individual quotations and tenders on less notice than specified.

Thank you.

Very truly yours,

RISS & COMPANY, INC.

A. J. Tait
General Traffic Manager

AJT:as

cc:

Mr. E. Frank Eardley, General Traffic Manager, P. O. Box 958,
Oakland 20, California
Mr. E. L. Morris, Traffic Manager, Interstate Motor Lines, Inc.
235 West 3rd South, Salt Lake City, Utah
Mr. R. C. Ashworth, Ashworth Transfer Company, 625 South Second West,
Salt Lake City, Utah
Mr. C. S. Thomson, Traffic Manager, Moab Garage Company, Moab, Utah
Mr. Chester J. Sams, Traffic Manager, Garrett Freightlines, Inc.,
2055 Pole Line Road, Pocatello, Idaho
Victorville-Barstow Truck Line, 2013 North Main Street, Los Angeles 31,
California
Mr. O. M. Bull, Traffic Manager, Tidewater Express Company, Warner &
West Streets, Baltimore 30, Maryland
Mr. J. J. Wade, Traffic Manager, Northern Transportation Company
5300 Sheila Street, Los Angeles 22, California
Montgomery & Company, 625-629 Walnut Street, Harrisburg, Pennsylvania
Mr. Thomas J. O'Loughlin, Jr., Traffic Manager, Law and Ingham Trans-
portation Company, 118-1/2 Amherst Street, Nashua, New Hampshire
Mr. Paul D. Gigante, Manager, O'Meara Truck Service, 28 Travis Street,
Boston, Massachusetts
Gordy Freight Lines, Inc., 1621 S. Canal Street, Chicago 18, Illinois

Mr. William H. Young, Traffic Manager, Meeks Motor Freight, 1311 West Market, Louisville, 3, Kentucky

Mr. R. H. Clinton, Traffic Manager, Gallagher Transfer and Storage Company, 2424 Arapahoe Street, Denver, Colorado

Mr. Fred H. Mackensen, Director of Traffic, Ringsby Truck Lines, Inc., 1420-33rd Street, Denver, Colorado

Mr. J. S. Ginocchio, Manager, Nevada-California Transportation Company, 35 East Plaza Street, Reno, Nevada

Boulder Truck Service, 1037 Walnut, Boulder, Colorado

Mr. Elmer L. Sims, Salt Lake Transfer Company, 170 West Second South Street, Salt Lake City 1, Utah

Mr. H. R. Tate, Traffic Manager, Barton Truck Lines, 8. E. Vine, Toole, Utah.

Mr. Robert Wells, Traffic Manager, Wells Cargo, Inc., 1775 E. 4th Street, Reno, Nevada

Mr. Leonard Haney, General Traffic Manager, Buckingham Transportation Company, 308 West Blvd., Rapid City, South Dakota

Morrissey Brothers Transportation Company, 169 Grant Avenue, Auburn, New York

Mr. George B. Graff, Traffic Manager, Southwestern Freight Lines, P. O. Box 1120, Lubbock, Texas

Mr. B. F. Billeter, Traffic Manager, Portland-Pendleton Motor Transportation Company, 1321 S. E. Water, Portland 14, Oregon

Received

Counterclaim document
115

ROCKY MOUNTAIN MOTOR TARIFF BUREAU, INC.
1600 Logan Street
Denver 3, Colorado

May 14, 1953

TO ALL PARTICIPATING CARRIERS IN
U. S. GOVERNMENT QUOTATION No. 43-B:

The bureau has received carrier requests to increase the rates in U. S. Government Quotation No. 43-B the same percentage (approximately nine per cent) as has been authorized by the Interstate Commerce Commission in I. & S. Docket M-4416 for the rates in Rocky Mountain Motor Tariff Bureau, Inc., Agent Tariffs MF-I. C. C. Nos. 21, 31, 50, 56 and 65.

You are requested to instruct the bureau, on or before May 29, 1953, if there are any particular rates in Quotation No. 43-B which you do not wish to have increased on the suggested basis.

Subsequent to May 29, 1953, the bureau will publish, on not less than thirty days' notice, such increases in all rates other than those which it is specifically instructed not to increase.

Respectfully,

ROCKY MOUNTAIN MOTOR
TARIFF BUREAU, INC.

- 800 -

Counterclaim document
116

Received May 28, 1953 Traffic
Dept. RISS & CO.

51 OC 5- KC

TAIT

Received

SUGGEST WE NOT CONCUR IN 9 PERCENT INCREASE IN 43 B UNTIL WE SEE
WHAT OTHER CARRIERS WILL DO ON INDIVIDUAL QUOTATIONS PERHAPS
IN 30 DAYS WE WILL WANT TO INCREASE ACCORDINGLY WITH ALL OTHER
CARRIERS.

OC E E STROHFELD 320 PM

Counterclaim document
117

P. I. E.

Pacific Intermountain Express
Oakland 4, California

May 29, 1953

Received

Mr. J. K. Newbold, Director of Traffic
Riss & Company
15 West 10th Street
Kansas City 6, Missouri

Dear Jim:

Pursuant to our long distance telephone conversation Wednesday, May 27th concerning the position which P-I-E. has taken at the moment in connection with Quotations 43-B and I-C, I am attaching copies of my May 27 letters addressed to the Bureau.

You will note that it will be our position not to take any increase until we have had an opportunity to study the results of the analyses being made by the carrier Committees.

Just as soon as we have had an opportunity to review the findings of those two Committees, I will be glad to inform you as to what our position will then be.

Very truly yours,

PACIFIC INTERMOUNTAIN EXPRESS
CO.

/s/ R. C. Ryall
Assistant Director of Traffic

RCR:sh
Attach,

Counterclaim document
118

ROCKY MOUNTAIN MOTOR TARIFF BUREAU, INC.
1600 Logan Street
Denver 3, Colorado

July 3, 1953

QN No. 3

To All Participating Carriers in U. S. Government Quotation No. 43-B:

With reference to our bulletin letter of May 14, wherein we notified the carriers that we had been requested to increase all rates and charges in U. S. Government Quotation No. 43-B by the same percentage (approximately 9 per cent) as authorized by the Commission in Rocky Mountain Motor Tariff Bureau, Inc., Agent, Tariffs MF-I. C. C. Nos. 36, 42, 52, 53 and 62, various carriers have requested that any increases in the rates be considered by installments in order that the carriers might have more time to study each particular rate to determine whether or not it should be subject to an increase.

The first group of items to be considered are the "all-freight" rates published in Items 300 thru 700 and Items 933 and 1375 of Quotation 43-B. We have been requested not to increase the rates published in Item 1377, as those rates are presently on the rail level.

Unless the bureau receives instructions to not increase rates in Items 300 thru 700 and Items 933 and 1375, on, or before, July 21, 1953, the proposed increases will be published on revised pages to Quotation 43-B which will be issued July 27, 1953, and will be scheduled to become effective September 5, 1953.

Respectfully,

ROCKY MOUNTAIN MOTOR
TARIFF BUREAU, INC.

[FAK]

Counterclaim
119

document

ROCKY MOUNTAIN MOTOR TARIFF BUREAU, INC.
1600 Logan Street
Denver 3, Colorado

[Received Mar. 10, 1954 Traffic Dept.]
[Riss & Co.]

March 8, 1954

BULLETIN SERVICE

BULLETIN QN NO. 22

To Traffic Managers of all participating carriers in U. S. Government Quotation
No. 43-C:

The bureau is in receipt of carrier requests to amend the rates for
Tooele Ordnance Depot, Warner, Utah, in Quotation 43-C as follows:

<u>ITEM</u>	<u>ROUTE NO.</u>	<u>PRESENT RATE</u>	<u>PROPOSED RATE</u>
950	13	455	496
1060	11	276	299
1060	13	276	299
1060	7	518	565
1070	24	331	351
1240	5	373	407
1250	5	373	407
1260	5	373	407
1270	5	373	407

The proposed rates are based upon a differential of nine (9) per cent
over the Salt Lake City and Ogden Area rates.

If no objection to the suggested increases are received by the bureau
on or before March 30, 1954, we shall arrange to amend the rates accordingly
for the account of all participating carriers when the next revised pages are
issued to the quotation thereafter, to become effective on not less than 30 days'
notice.

Respectfully,

ROCKY MOUNTAIN MOTOR TARIFF
BUREAU, INC.

WESTERN UNION

Counterclaim document
120

DENVER COLO 2 325 PMM

[OK on all Routes Per Mr. Green

RISS AND CO

1/3/56

Wire all carriers]

15 WEST 10ST KSC

EFFECTIVE DECEMBER 28TH RAILROADS INCREASED THEIR RATE FIVE
PER CENT ON PROJECTILES AND SHELL CASINGS RICHMOND CALIFORNIA
TO EDGEWOOD ARSENAL MARYLAND AMENDMENT 1 TO TCFB. QUOTA-
TION 290.

REQUEST IMMEDIATE CONSIDERATION AND YOUR WIRE CON-
CURRENCE TO BUREAU INCREASING PRESENTLY PUBLISHED RATES
IN ITEMS 4310 AND 6180 RM QUOTATION 43-D TO \$2.97

W M CARPENTER KVAJO FREIGHT LINES

23 1 TCFB 290 4310 6180 RM 43-D \$2.97

(34)

(441 PM JAN 2 57)

WESTERN UNION

[G25-R175 DV [R185 BALT
N35 ANA-DV-KC T95]
W115 ELP G95 -DAL] Route 3

[4310 - 378 plus (illegible) 397]

Counterclaim document
121

RISS & COMPANY, INC.
(Teletype System)

TELEGRAM

No. 73 Date Jan 3 1957 Destination(s) Denver
To Rose

Re R M 43D Item 4310 Route 3

Please have Mr Olsen increase rate from Richmond Calif to Edgewood Arsenal
Md. and Ordnance Assembly Plant Edgewood Md to 397 cents per cwt.

Truckload Minimum Weight 30,000.

Routes 025 R 175 Dv R185 Balt T95

 N 35 Ama or Dv R185 Balt T95

 W 175 Elp G95 Dal R 185 Balt T95

Also advise Navajo and Rio Grande of such proposal and ask them to advise
bureau of their concurrence as soon as possible.

We have wired Tidewater, Garrett, Western and Gillette asking for their con-
currence.

Signed A J Tait

Time

Counterclaim document
122

SOUTHERN MOTOR CARRIERS RATE CONFERENCE
873 Spring Street, N. W.
Atlanta, Georgia

[THIS IS IMPORTANT]

November 21, 1952 mh
File: RA - 3013.42

**TO ALL CARRIERS PARTICIPATING IN OUR GOVERNMENT RATE
SHEET NUMBER 42-A**

Gentlemen:

You are of course familiar with the fact that we have recently issued supplements increasing the commodity rates published in our various tariffs by publication of a 15 per cent increase in lieu of the present six per cent increase, which publication is to become effective December 15, 1952. It is our understanding that you desire a similar increase to be published in connection with the rates published in our Government rate sheets.

We are therefore arranging to supplement our Government Rate Sheet Number 42-A to provide for publication as follows:

Make all rates subject to 15 per cent increase in lieu of the six per cent increase, except as follows:

1. Rates that are already subject to the 15 per cent increase.
2. Rates that now specifically provide that they are not subject to any increase by the use of reference mark Circle NI.
3. Rates referred to in Item 8.4 of Supplement 4.

The 15 per cent increase is to be accomplished by publication of a conversion table instead of adding it to the total charges.

The rates referred to in Paragraphs 2 and 3 above were established on a competitive basis and apparently the competitive situation has not changed and therefore we are proposing to make no change in connection with these rates but in event that you have information to the effect that the competitive situation has changed and the rates should be increased, please advise us to that effect.

We will arrange to proceed with the publications as outlined above, effective December 15, 1952, unless we receive advice from you to the contrary not later than December 1, 1952.

Yours very truly,

/s/ J. R. Shumate

Asst. General Manager

"LET CLAIM PREVENTION BE YOUR DAILY INTENTION"

Received

12-24-52
[File]

Counterclaim. Document
123

SOUTHERN MOTOR CARRIERS RATE CONFERENCE

873 Spring Street, N. W.
Atlanta, Ga.

**TO ALL CARRIERS PARTICIPATING IN OUR
GOVERNMENT RATE SHEET
NUMBER 42-A**

December 10, 1952 mh
File: RA - 3013.42

Gentlemen:

This supplements our letter of November 21, 1952, regarding amending our Government Rate Sheet Number 42-A, to provide for an increase of 15 per cent in lieu of the present six per cent increase in connection with rates in that rate sheet.

Please be advised that we received no objections to the changes as proposed in our letter of November 21, and we are therefore arranging to issue Supplement 9 to our Government Rate Sheet Number 42-A, in which we have provided for the changes as outlined in our bulletin of November 21 to become effective December 15, 1952. Please, therefore, in the future when assessing charges on shipments moving under the rates in Rate Sheet Number 42-A, do not overlook the provisions of Supplement 9 referred to above effective December 15, 1952.

Yours very truly,

J. R. Shumate
Asst. General Manager

Received

"LET CLAIM PREVENTION BE YOUR DAILY INTENTION"

Counterclaim Document 124

1956 Page 64

Long distance

1-27-56

Talked to Thompson, SWMFB Dallas on 7% increase on explo. Said letter going out today stating 7% be applied to rates on tender 1000-0 unless carriers advise otherwise. I am to give him a copy of Riss revision. Advised him Thickett to be in 1-30-56 and matter discussed further.

Counterclaim Document 125

Received

SOUTHWESTERN MOTOR FREIGHT BUREAU, INC.
4112 San Jacinto
Dallas 4, Texas

January 27, 1956

In reply please refer to file G-1

PARTICIPATING CARRIERS, TARIFF 1000-0

Gentlemen:

We have received requests that the rates and charges in Tariff 1000 applying on U. S. Government tenders be increased by seven percent (7%) to correspond with the increases being assessed on other traffic. It is our understanding that the rail lines are in the process of increasing all their tenders by this amount.

As per our usual procedure, unless there is a carrier who does not wish the increases made effective for his line we shall proceed to make publication. If there are those who have objections they will please advise this office on or before February 6, 1956. Otherwise it will be assumed you approve.

Yours very truly,

/s/ H. G. Thompson

H. G. Thompson

HGT: hm

[2-2-56]

[Maguire, Strohfield & Young say to take the 7% Increase if all carriers do likewise. A. J. T.]

Counterclaim : Document 126

WESTERN UNION

[70] PAID

2:45 PM

FEB. 6, 1956

H. G. THOMPSON
SOUTHWESTERN MOTOR FRT. BUREAU INC.
4112 SAN JACINTO
DALLAS 4, TEXAS

REFERENCE YOUR FILE G-1 DATED JAN. 27th TARIFF 1000 ZERO
AGREEABLE INCREASING RATES ON INERT COMMODITIES HOWEVER
UNABLE AGREE ON EXPLOSIVES RATES BEING INCREASED AT THIS
TIME WILL ADVISE FURTHER LATER RELATIVE EXPLOSIVES.

RISS & CO., INC., NEWBOLD

Received

Counterclaim Document 127

Received

MIDDLEWEST MOTOR FREIGHT BUREAU
Post Office Drawer No. 647
Kansas City 41, Missouri

April 30, 1952
File: Proposal C-695
cy: Tariff 303-B

TO THE CHIEF TRAFFIC OFFICER
OF PARTICIPATING CARRIERS IN
MMFB TARIFF 303-B AND ALL
MEMBER LINES.

GENTLEMEN:

We are in receipt of the following Proposal for treatment of all rates in
Tariff 303-B:

Proposal C-695: Increase rates in MMFB Tariff 303-B
by nine (9) percent.

Justification: Adjust rates to compensate for increased
operating costs.

[OK]

Inasmuch as this is a proposition not treated under our commercial rate
procedure it is necessary that each carrier now participating in Tariff
303-B notify us immediately of their adoption or declination of this ad-
justment.

/s/ J. D. Lawson,

J. D. Lawson,
General Manager

DJ/fts

Counterclaim Document 128

[5-20-52]

May 13, 1952

Mr. J. D. Lawson, General Manager
Middlewest Motor Freight Bureau
Post Office Drawer No. 647
Kansas City 41, Missouri

Dear Mr. Lawson:

This refers to your Proposal C-695 covering increases in the Section 22 Quotations in Tariff 303-B. We are of the opinion that these rates should be increased observing any rail quotation or individual rate quotation as a maximum, and providing that all carriers party to the tariff go along with the increases.

Very truly yours,

/s/ M. P. Hester
Vice-President - Traffic

MPH/pc

Counterclaim Document 129

MIDDLEWEST MOTOR FREIGHT BUREAU
Post Office Drawer No. 647
Kansas City 41, Missouri

June 10, 1952
File: Proposal C-695
cy: Tariff 303-B

TO THE CHIEF TRAFFIC OFFICER OF
PARTICIPATING CARRIERS IN MMFB
TARIFF 303-B AND ALL MEMBER CAR-
RIERS

GENTLEMEN:

Response to our advice of April 30, 1952 to all carriers, concern-
ing increase of rates in tariff named, is such that a meeting is hereby called
for 10:00 O'Clock A.M., Wednesday, June 25, 1952, Hotel President,
Kansas City, Missouri.

The purpose of this meeting is to permit review of rates by car-
rier representation and determine if increase of nine (9) percent referred
to in our advice can be published, also to consider publication of new rates
as suggested by governmental agencies.

If making hotel reservation at the Hotel President, it will be well
to mention that it is in connection with this meeting.

Cordially yours,

/s/ J. D. Lawson [D.J.]

J. D. Lawson,
General Manager

JES/fts

Counterclaim Document 130

[6-19-52 from Rhodebeck]

RISS & COMPANY, INC.

INTER-OFFICE CORRESPONDENCE

To:

From:

Name Mr. A. J. Tait

Date June 13, 1952

Terminal Kansas City, Mo.

Terminal Oklahoma City, Okla.

[6/23/52]

Subject 9% increase in 303B

Dear Al:

First, let me say I am in favor of the 9% increase. I believe all the carriers will go along with this except Strickland. They have been the problem child "all the way" on rates in 303B.

I have had no information as to rails quoting strictly tariff rates. However I hope they adopt that policy.

This is not much information as to your question, but is all that I have. I know of no specific moves that would be disturbed by the increase.

My only opinion would be "stay competitive."

Yours truly,

/s/ Ed

E. E. Strohfield

EES/ss

cc: Cal Rhodebeck, NY

Received

Counterclaim Document 131

MIDDLEWEST MOTOR FREIGHT BUREAU

July 18, 1952

File: Proposal C-695

**TO THE CHIEF TRAFFIC OFFICER OF
PARTICIPATING CARRIERS IN MMFB
TARIFF 303-B AND ALL MEMBER LINES**

Gentlemen:

Under Proposal C-695, Tariff 303-B was reviewed at Meeting June 25, 1952, by interested carriers' representatives for possible increases or other changes. Representatives in attendance, and others not in attendance by letter, have suggested action in connection with items in effective supplements and original tariff set out on Page 2 thru 5 hereof, no change to be made in items not listed.

Inasmuch as this is a proposition not treated under our commercial rate procedure, it is necessary that each carrier now participating in Tariff 303-B notify us on or before August 5, 1952 of their adoption or declination of these adjustments.

J. D. Lawson,
General Manager

DJ/fts

Counterclaim Document 132

No. 256 - 7-28-52

303-B all carriers approve

Have copies gone to govt. agencies

Rhodebeck - Strohfield discussed at K. C.

Counterclaim. Document 133

File 30-12

Mr. C. H. Rhodebeck
New York City

August 12, 1952
Kansas City, Missouri

Dear Cal:

Kindly refer to your letter of August 7, 1952 concerning changes in Middlewest Tariff 303-B U.S. Government rate quotation.

The carriers present at the meeting held in Kansas City on June 25 to consider all of the items published in Tariff 303-B, agreed that rates on explosives and other articles as well should be (subject to minimum weight-- pounds per vehicle used.) The group, as assembled, were all in favor of this proposal, with the exception of myself, representing Riss & Company, Inc. During the noon recess, the matter was discussed with Mr. Hester and he in turn had a discussion with Mr. Quinn regarding the position Riss should take in the proposal. Early on the afternoon of June 25, Mr. Hester called me at the meeting and advised that Mr. Quinn was agreeable to the application of the forementioned phase in conjunction with explosive rates.

It was felt, in view of the expression of all the carriers present, that Riss & Company, Inc. should join in changes proposed, with the proviso that all carriers participating in the Tariff 303-B would likewise approve the changes.

The Middlewest Bureau is now in the process of getting the approval or rejection of the numerous changes to Tariff 303-B.

/s/ A.J.T.

A. J. Tait

AJT:ms

cc: Mr. R. B. Riss
Mr. M. P. Hester
Mr. E. E. Strohfield
Mr. Larry Quinn

Counterclaim : Document 134

No. 363 - 8-14-52

M. P. Hester talked with Johnson - Middlewest M T B
relative carriers all increasing rates & provisions
M W M T B tender 303-B. Hester wants all tenders
bureau issues. Not interested 303-B otherwise acct
can't control level of rates.

Counterclaim . Document 136

[LQ 12/22/52]

MIDDLEWEST MOTOR FREIGHT BUREAU
Post Office Drawer No. 647
Kansas City 41, Missouri

December 16, 1952

File: Tariff No. 303-D

Cy: Tariff No. 303-C

Cy: C-695

NOTICE OF REISSUE

**TO CHIEF TRAFFIC OFFICER OR OWNER ALL
PARTICIPATING CARRIERS IN TARIFF NO. 303-C**

Middlewest Motor Freight Bureau Tariff No. 303-C, will be reissued to
publish proposal No. C-695.

The reissue is now in the process of compilation and the manuscript will
be ready to be forwarded to the printer on or about December 31, 1952.
Its form and context will be similar to those of the current issue.

If you have any desired amendments which might be made without pursuing
the prescribed rate proposal procedure, please submit such data to us by
December 30, 1952.

Cordially yours,

/s/ J. D. Lawson, M.M.

J.D. Lawson, Issuing Officer

MM:my

Counterclaim Document 137

1-30-56

Talked to Bob Fickel MWMFB date concerning action on increases rates in 303-E. Said proposal GO No. 9 (white sheet) to go out this week requesting info on 7% increase on all rates in 303-E. Carriers to advise by 2-15-56.

Counterclaim. Document 138

MIDDLEWEST MOTOR FREIGHT BUREAU
Post Office Drawer 647
Kansas City 41, Missouri

March 6, 1956
File: Proposal G.Q. -18
cc: Proposal G.Q. -9
cc: Tariff 303-E

**TO THE OWNER OR CHIEF TRAFFIC OFFICER,
ALL CARRIERS PARTICIPATING IN
MMFB TARIFF 303-E AND ALL
MEMBER LINES**

Gentlemen:

We are in receipt of the following proposal for treatment of all rates in
Tariff 303-E:

Proposal G.Q. -18 Amend Proposal G.Q. -9 by increasing
rates in M.M.F.B. Tariff 303-E
by six (6) per cent in lieu of seven
(7) per cent. Publication of these
proposals to become effective
April 18, 1956.

JUSTIFICATION: Hold increases to basis in Docket Ex Parte 196.

The response to Proposal G.Q. -9 has been unanimously in favor of the in-
creases in Tariff 303-E, therefore, we are proceeding to publish six per
cent increase to become effective April 18, 1956.

/s/ J. D. Lawson

J. D. Lawson
General Manager

DJ:ls

MIDDLEWEST MOTOR FREIGHT BUREAU
Post Office Drawer 647
Kansas City 41, Missouri

November 11, 1953
Bulletin No. 140
File: C5.7

TO ALL MEMBERS:

The following is a list of changes proposed or published by competitive carriers affecting rates and charges apply from, to, or between points in the Middlewest territory which may be of interest to you: (All rates are stated in cents per 100 pounds)

RAIL PROPOSALS

SUBJECT
NUMBER

(Rates are subject to Ex Parte tariffs X-162-6-8 and X-175 unless otherwise provided).

- 1 (SW-66449) - BOXES, FIBREBOARD, PULPBOARD, OR STRAWBOARD, Muskogee, Oklahoma to St. Louis, Mo., and E. St. Louis, Ill. Establish rate of 42¢ not subject X-162-6-8.
- 2 (SW-66451) - ALUMINUM BILLETS, BLOOMS, INGOTS, PIGS OR SLABS, Chalmette and New Orleans, La., to WTL territory. Establish rates that reflect 32 1/2% of docket 28300 first class rate, minimum 30,000 pounds.
- 3 (SW-66455) - MOLASSES, SYRUP, origins west of the Mississippi River, named in NOFTB tariff 35, to Laurens, Ia. Establish rates, CL, described item 100, NOFTB 35, of 101¢ not subject X-162-6-8.

Counterclaim Document 139
Page two

- 4 (SW-66469) - ALUMINUM BILLETS, BLOOMS, INGOTS, ETC., FROM, TO AND WITHIN THE SOUTHWEST. Amend item in SWL tariffs shown below, to include aluminum billets, blooms and slabs, in commodity described: SWL 1-A, item 1161; SWL 3-D, item 6475-C; SWL 20, item 1138-C; 1139-B, 1140-D, 1146-L, 1149-A, 1151-A, 1152-D, 1155-C, 1145-A and 1150-G, SWL 30, item 200, 202-A; SWL 34, item 519, 520, 522, 525, 528, 532, 2850, 2855 and 2845; SWL 45, item 535; SWL 114, item 1024; SWL 173, item 4701 and 7260; SWL 213, item 150; SWL 252, item 1046; SWL 282, item 515.
- 5 (SW-66487) - ALCOHOLIC LIQUORS, WINE OR VERMOUTH, Peoria, Ill., to Church Point and New Iberia, La. Establish rate of \$1.70 at minimum weight of 30,000 pounds and rate of \$1.36 on weight of that portion of shipment in excess of 30,000 pounds, not subject Ex Parte 162-6-8-175.
- 6 (SW-66488) - VARIOUS COMMODITIES, Minneapolis and St. Paul, Minnesota to Dallas, Texas. Establish rate of \$1.41 per 100 pounds: ABRASIVES, CAMERAS, CINEMA OR PHOTOGRAPH MATERIALS, CELLULOSE FILM PRODUCTS, CLOTH OR TAPE INSULATION, NOIBN, MACHINERY OR MACHINES OR PARTS, NOIBN, OFFICE OR STORE EQUIPMENT, PAPER OR PAPER ARTICLES, PLASTIC MATERIALS OR PRODUCTS, PRINTERS' EQUIPMENT, FURNITURE OR SUPPLIES, STONE STENCIL COMPOUNDS (RUBBER AND GLUE COMBINED), TAPE, SOUND RECORDING. In mixed CL subject to note in connection with the entries of "Paper or paper articles", reading "note-The weight of articles given reference hereto will be charged at a rate of \$1.28 not subject X-175-B increase.

- 7 (SW-66489) - PROPRIETARY ANTI-FREEZE PREPARATIONS, between points in Southwestern territory on the one hand and northern territory on the other. Establish exception rating of class 30 in SWL tariff 173-B.
- 17 (WTL-C-36-2252) - CANS, fibreboard, CL, as described in item 1880, WTL tariff 25-I, minimum 18,000 pounds. From Joliet, Illinois to Manitowoc, Wisconsin. Pro. 57¢ cwt., subject to X-175-B.
- 18 (WTL-C-50-1195) - COMMODITIES, less than carload, named in WTL tariff 374-C. Between Council Bluffs, Ia., Omaha and South Omaha, Nebraska. Amend destinations in Iowa. Pro. Amend item 80 of WTL tariff 374-C by publishing a provision that the rates named therein will not apply where lower class rates are named in WTL tariff W-1000.
- 19 (WTL-E-174-94) - COPPER CABLE, LEAD COVERED COPPER CABLE, COPPER WIRE AND WIRE STRAND, COPPER, minimum 30,000 pounds, between WTL territory. Pro. cancel entries on copper cable, lead covered copper cable, copper wire and wire strand copper.
- 20 (WTL-D-29-578) - WASHING MACHINES:andparts, household, CL. From Webster City, Iowa to Coldwater, Michigan. Pro. \$1.22 cwt., subject to Ex Parte 175-B increase, minimum 10,000 pounds, 40 ft. 7 in. car.
- 21 (WTL-X-E-122-97) - METHYL CHLORIDE, CL. From, to and between stations in WTL territory. Also from Marionette, Wisconsin to Chicago, Ill., Baton Rouge and No. Baton Rouge, La. Present class 46 exception rating named in item 3972 series, WTL exceptions tariff 25-I. Commodity rate of 79¢ cwt., subject to Ex Parte 175-B increase, Marionette,

Counterclaim Document 139
Page four

Wisconsin to Chicago, Ill., publish in item 1475 series of C&NW GFD tariff 8115-R and commodity rate of \$2.09 cwt., subject to Ex Parte 175-B increase Marinette, Wis., to Baton Rouge and North Baton Rouge, La., published in item 1210 series of WTL tariff 80. Pro. Cancel the present exception rating and commodity rates referred to above, thereby permitting Uniform Classification 1 rating and the applicable class rate tariffs to apply.

- 22 (WTL-D-149-144) - CLEANING, SCOURING & WASHING COMPOUNDS as described in items 12475, 12480 and 12485 of WC. From Kansas City, Missouri to Minneapolis, Minnesota Transfer and St. Paul, Minnesota. Pro. 61¢ not subject to X-175-B, minimum 36,000 pounds, 68¢ not subject to X-175-B, minimum 20,000 pounds.

MOTOR PUBLICATIONS

WHEELOCK BROS., supplement No. RP 44 to tariff No. 1, MF-ICC NO. 9, EFFECTIVE December 11, 1953.

- 23 Item (R)550-1 - FEED, ANIMAL OR POULTRY VIZ: BISCUITS, DOG, WHOLE, BROKEN OR GROUND, IN PACKAGES, MEAT, MILK OR FISH OR A MIXTURE OF MEAT, MILK OR CEREAL OR VEGETABLES, IN METAL CANS IN BARRELS OR BOXES. From Kansas City, Missouri to Chicago, Ill, rate 71, 56 cents, minimum 20,000, 26,000 pounds, respectively.

MOTOR CARGO, INC., tariff No. 93 (c) 91, MF-ICC NO. 93(c) 91, EFFECTIVE November 30, 1953.

- 24 Item 30 - ABRASIVE CLOTH OR PAPER. From St. Paul, Minnesota to Pittsburgh, Pennsylvania, rate 147 cents cwt., minimum 20,000 pounds.

. . . the higher rate) exceeds the charge based on lower rate at the actual weight (but not less than the minimum weight specified for the lower rate), the latter charge will apply. Not subject to Increased Rates and Charges No. 1-175-B. Rates expire with June 1, 1954, unless sooner changed, cancelled or extended.

* * * *

THE FOLLOWING SECTION 22 QUOTATIONS HAVE BEEN FILED BY
CARRIERS DIRECT TO GOVERNMENTAL AGENCIES

(Publication will not be made in tariff 303 (series) unless we are instructed to do so)

- 58 Watson Bros. Transportation Co., individual tender No. 1000 on "AMMUNITION AND/OR EXPLOSIVES OR FIREWORKS", names numerous specific rates to numerous to reproduce here. Some of the carriers concurring in tender 1000 are American, Buckingham, Campbell, Gateway, Gillette, Hayes, Leeway, Southern Express, Strickland and Union Freightways. Representative territorial quotations are as follows: Between Black Hills Ordnance Depot, Igloo, South Dakota and Camp McCoy, Wisc., (1)323, (2) 280 cents; Erie Ordnance Depot, LaCarne, Ohio, (1)411, (2)356¢; Joliet Arsenal, Elwood, Ill., (1)347, (2)301¢; Between Camp Ripley, Little Falls, Minnesota and Iowa Ordnance Plant, Burlington, Ia., rates (1)206, (2)179¢; Kansas Ordnance Plant, Parsons, Kansas, (1)272, (2)235¢; Lone Star Ordnance, Defense, Texas, (1)383, (2)332¢; Ordnance Ammunition Center, Joliet, Ill., (1)225, (2)195¢; Between Cornhusker Ordnance Plant Coplant, Neb., and Ft. Sill, Oklahoma, (1)245, (2)212¢; Jefferson Priving Grounds, Madison, Ind., (1)287, (2)248¢; Kankakee Ordnance Works, Elwood, Ill., (1)243, (2)211¢; Kansas Ordnance, Parsons, Kansas, (1)184, (2)159¢; Between Ft. Leonard Wood, Missouri and Iowa Ordnance Plant, Burlington, Ia., (1)175, (2)151¢; Rocky Mountain Arsenal, Ladora, Colo., (1)328, (2)284¢; Twin Cities Arsenal, New Brighton, Minn., (1)251, (2)218¢^x; Between Joliet Arsenal, Elwood, Ill., and Kansas Ordnance Plant, Parsons, Kansas^x, (1)230^x, (2)191¢; [230 191]

Counterclaimant Document 139

Page six

Rocky Mountain Arsenal, Ladora, Colo. [x] (1) 336 [x] (2) 291¢; [317
275]
Twin Cities Arsenal, New Brighton, Minn., (1) 188, (2) 163¢;
Between Lake City Arsenal, Lake City, Mo., and Ordnance
Ammunition Center, Joliet, Ill. [x] (1) 188 [x] (2) 163, Rocky Moun- [188
tain Arsenal, Ladora, Colo., (1) 297, (2) 257¢; Savanna Ordnance 163]
Depot, Savanna, Ill. [x] (1) 188 [x] (2) 163¢; Terre Haute Ordnance [188
163]
Depot, Terre Haute, Ind. [x] (1) 179 [x] (2) 155¢; Between Louisiana [180
Ordnance Plant, Doyline, La., and Nebraska Ordnance Plant, 156
Mead/Wahoo, Neb., (1) 315, (2) 273¢; Savanna Ordnance Depot, 461-53
Savanna, Ill., (1) 282, (2) 244¢; Twin Cities Arsenal, New 1-23-53]
Brighton, Minn., (1) 357, (2) 309¢; Between San Jacinto Ord-
nance Plant, Houston, Texas and Savanna Ordnance Depot,
Savanna, Ill., (1) 336, (2) 291¢; Sioux Ordnance Depot, Sidney,
Neb., (1) 404, (2) 350¢; Sunflower Ordnance Works, DeSoto,
Kansas, (1) 279, (2) 242¢, Between Terre Haute Ordnance
Depot, Terre Haute, Ind., and Twin Cities Arsenal, New
Brighton, Minn., (1) 227, (2) 196¢; U.S.N.A.D., Hastings,
Neb., (1) 263, (2) 228¢. (1) Minimum 20,000 pounds. (2)
Minimum 30,000 pounds.

- 59 "AMMUNITION FOR CANNON WITH SOLID OR EXPLOSIVE
PROJECTILES, AMMUNITION NOI, AND/OR EXPLOSIVES".
Between Kansas Ordnance Plant, near Parsons, Kansas and
Ft. Sill, Oklahoma, rate 153 cents, minimum 30,000 pounds.
BY: Missouri-Arkansas Transportation Co., Mid-Continent
Freight Lines, Bill Hunt Motor Lines, Campbell "66" Express.

Counterclaim Document 139
Page seven

60 "AMMUNITION AND/OR EXPLOSIVES AND/OR FIREWORKS".
From Indiana Arsenal, Charlestown or Watson, Ind., to Twin
Cities Arsenal, rate 222 cents per 100 lbs., minimum 30,000
pounds. BY: Adkins Transfer, Falls Cities Transfer & Storage
Co., Hayes Freight Lines, Merchants Motor Freight.

/s/ J. D. Lawson,

J. D. Lawson
General Manager

DJ:mis

[x Check our rates and is Watson is
let me know] [Quinn]

Counterclaim Document 140
Page one

UNIFORM TENDER OF MOTOR CARRIER RATES OR CHARGES

Tender Number	Effective Date	Expiration Date	Issue Date
461-53	November 23, 1953	June 30, 1954, unless sooner can- celled, changed or extended.	November 23, 1953

1. For and on behalf of Riss & Company, Inc., we are authorized to and do hereby quote and offer to the DEPARTMENTS OF THE ARMY and/or AIR FORCE and/or NAVY and/or MARINE CORPS, hereinafter called the Government, pursuant to Section 22 of the Interstate Commerce Act, or other appropriate statutory authority, the transportation services applicable to property hereinafter described, shipped by or for the government on government bills of lading, or on commercial bills of lading endorsed to show that such bills of lading will be exchanged for government bills of lading at destination, for the charges and under and subject to the terms and conditions herein stated.

2. Type of Carrier:

(x) Common

3. Traffic Covered

a. Description of Commodity:

Ammunition and/or explosives and/or fireworks described as Class A and B explosives in the Commission's explosives and other dangerous articles regulations, ammunition not included in the classes described above and component parts of explosives and ammunition.

Consignor to load, brace and stow, and consignee to unload and remove bracing on all shipments moving at the rates provided for herein.

Counterclaim Document 140
Page two

b. Between:

Lake City Arsenal,
Lake City, Missouri

c. And:

Terre Haute Ordnance Depot,
Terre Haute, Indiana

d. Rate:

179 cents per cwt.

e. Route:

Riss & Company, Inc.

f. Minimum Weight:

20,000 pounds

dl. Rate:

155 cents per cwt.

fl. Minimum Weight:

Volume - 30,000 pounds

4.

Trailer Interchange

Through Trailer Interchange in Effect:

Not applicable

5.

Packing Specifications

Except as otherwise provided in this paragraph, the rates named in Item 3 above are subject to all terms and provisions of

National Motor Freight Classification No. 12, MF-I.C.C. No. 4,
Supplements thereto and reissues thereof

American Trucking Association, Inc., Agent, Explosives and
Dangerous

Articles Tariff No. 7, MF-I.C.C. No. 2, Supplements thereto
and reissues thereof

on file with the Interstate Commerce Commission or any state regulatory authority and in effect on the date of this tender.

6. Accessorial Services and Rate or Charge therefor effective with this tender

None

7.

Authority for Operation

In tendering the rates or charges and other conditions set forth above, the carrier represents to the United States Government that the transportation

Counterclaim Document 140
Page three

will be performed in accordance with all federal, state or municipal laws and regulations and that said carrier possesses the required operating authority to transport the commodity to, from or between the points or places, or within the territory herein set forth, as is embraced within the following dockets, certificates, permits, or temporary operating authorities:

Riss & Company, Inc.

MC 200 and Subs

8. Method of Settlement

The carrier shall bill the government for the freight charges in the usual manner, and the government shall pay promptly to the carrier the amount due under this tender.

9. Termination or modification of Tender

This tender may be cancelled or modified by written notice of not less than thirty (30) days by either party to the other, except as to shipments made from original point of shipment (or port of importation, where involved) before the effective date of such notice, and except as to any accrued rights and liabilities of either party hereunder, and further, except such cancellation or modification may be accomplished upon shorter notice by mutual agreement of the parties concerned.

10. Acceptance of Tender

This tender, when accepted by the government by making any shipment or settlement under the terms hereof or otherwise, will constitute an agreement between the parties hereto as to the transportation services herein described. This tender is made with the understanding that its acceptance will not constitute a guarantee by the United States Government of any particular volume of the traffic herein described.

Issued by:

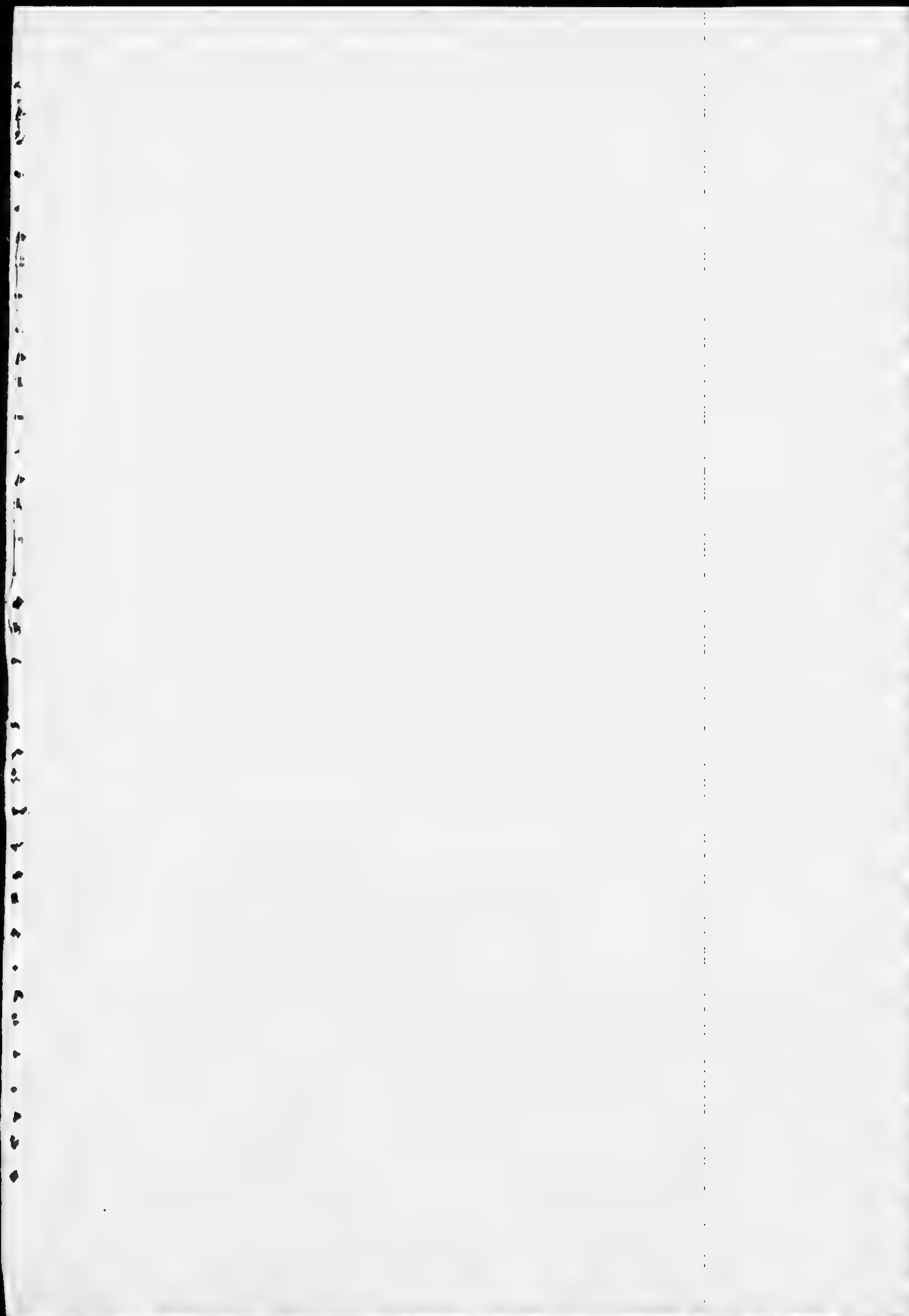
RISS & COMPANY, INC.

By: /s/ J.K. Newbold, Jr., Director of Traffic

[Tender 461-53]

15 West 10th Streets
Kansas City, Missouri

AJT



JOINT APPENDIX

VOLUME IV

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Nos. 16,206, 16,255, 16,376

THE ASSOCIATION OF WESTERN RAILWAYS,
TRAFFIC EXECUTIVE ASSOCIATION-EASTERN
RAILROADS, EASTERN RAILROAD PRESIDENTS
CONFERENCE, et al.,

Appellants,

v.

RISS & COMPANY, INC.,

Appellee.

Nos. 16,206

and 16,376

THE ATCHISON, TOPEKA & SANTA FE RAILWAY
COMPANY; CHICAGO, BURLINGTON & QUINCY
RAILROAD COMPANY; CHICAGO, MILWAUKEE,
ST. PAUL & PACIFIC RAILROAD COMPANY, et al.,

Appellants,

v.

RISS & COMPANY, INC.,

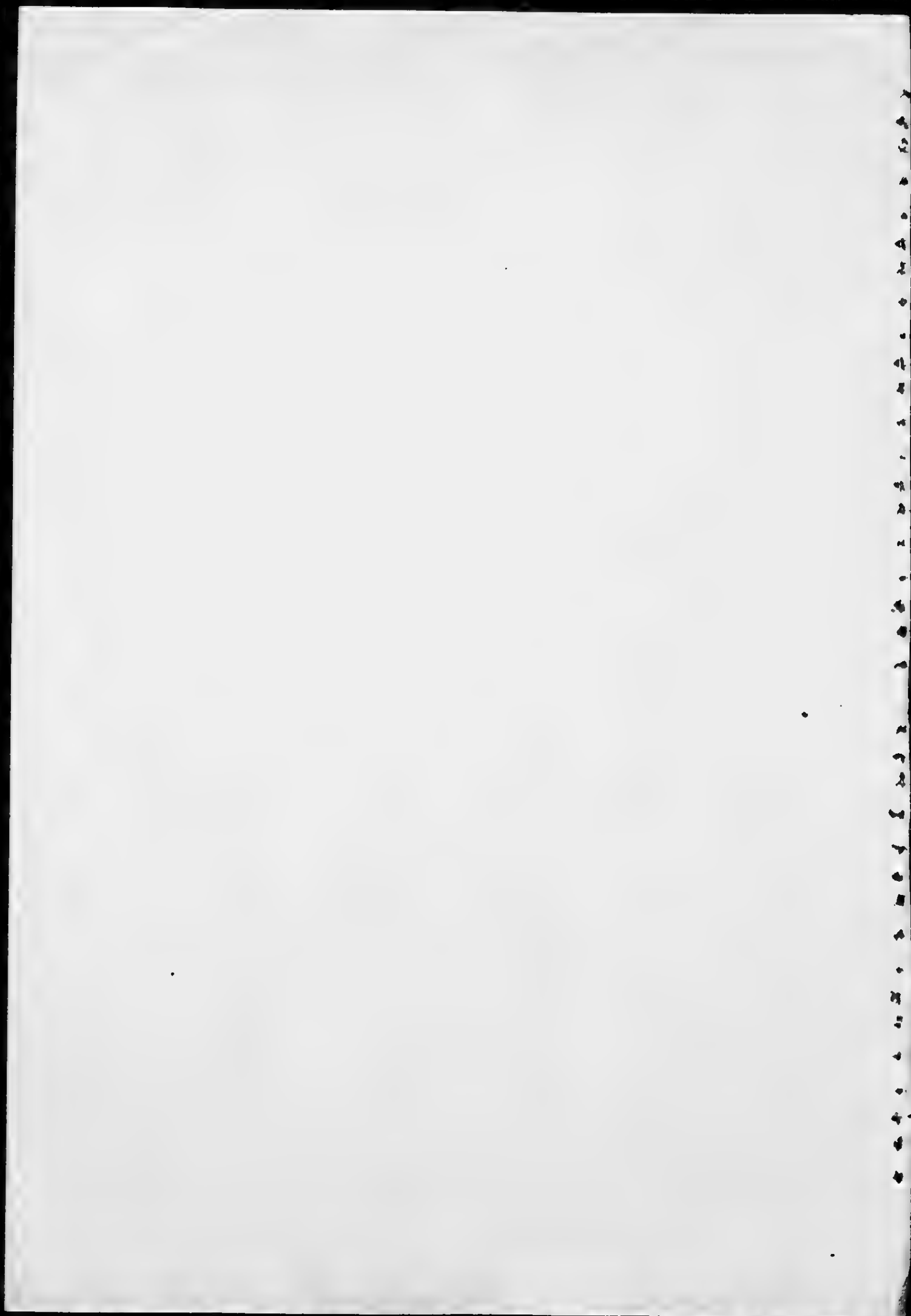
Appellee.

No. 16,255

Appeal from a Judgment of the
United States District Court for the District of Columbia

CONTENTS
Pages 833 to 1048

United States Court of Appeals
For the
District of Columbia
OCT 15 1951
FILED
Joseph B. Stewart
CLERK



(xiv)

INDEX

VOLUME IV

	<u>Page</u>
Order Directing Separate Trial on Counterclaims of Defendants (66), (8), (16), (21), (22), (23) (33), (40), (41), (70), (76), (72) and (78), and Reserving Ruling on Plaintiff's Motion to Dismiss Counterclaims, entered September 21, 1960	833
Plaintiff's Motion for a Summary Judgment or a Directed Verdict as to Defendants' Antitrust Counterclaims, filed September 23, 1960	835
Memorandum in Support of Plaintiff's Motion for a Directed Verdict or Summary Judgment as to Defendants' Antitrust Counterclaims, filed October, 1960	836
Additional Requests for Instructions of AWR (Excerpts), filed October 3, 1960	844
Additional Requests for Instructions of AWR (Second Series), filed October 5, 1960	845
Motion of PRR to Dismiss or for a Directed Verdict, filed October 5, 1960	846
Motion of Byoir for a Directed Verdict, filed October 5, 1960	847
Motion of ERPC for a Directed Verdict, filed October 5, 1960	849
Renewal of Motion of TEA for a Directed Verdict, filed October 5, 1960	850
Motions of AWR and the Western Railroad Defendants for a Directed Verdict, filed October 5, 1960	851
Affidavit of Ernest C. Pierre	855
Affidavit of R. W. Talbot	860
Affidavit of E. A. Tharp, October 6, 1960	862
Affidavit of G. H. Rehm, October 10, 1960	864
Affidavit of Richard J. Flynn, October 7, 1960	865
Affidavit of T. M. Caiazza, October 7, 1960	866
Additional Requests for Instructions of AWR (Third Series), filed October 7, 1960	868

	<u>Page</u>
Order Denying Motions for a Directed Verdict Made by All Defendants at the Close of the Evidence, entered October 10, 1960	870
Instructions to the Jury (First Draft), October 11, 1960	870
Instructions to the Jury (First Draft), amended page 30; Insert I, pp. 30A-30B; pages 40-46, October 13, 1960	909
Additional Requests for Instructions (4th Series) on Behalf of AWR and Western Railroad Defendants (Excerpt), filed October 12, 1960	921
Defendants' Proposed Instructions to the Jury, filed October 13, 1960	922
Defendants' Objections to First Draft of Court's Instructions to the Jury, filed October 13, 1960	982
Letter from Mr. McGlothlin to Judge Sirica Concerning the Court's proposed Instruction Citing <u>Kiefer-Stewart</u> <u>v. Seagrams and Budget Dress Corp. v. ILGWU</u> , and to modification of such instruction proposed in "Plaintiff's Memorandum in Opposition", filed October 13, 1960	1010
Order Reserving Ruling on Plaintiff's Motion for Summary Judgment or a Directed Verdict as to Defendants Antitrust Counterclaims Until Sometime After the Conclusion of the Case in Chief, entered October 13, 1960	1013
Defendants' Proposed Special Interrogatories to the Jury under Rule 49(b), filed October 14, 1960	1013
Defendants' Proposed Form of General Verdict	1020
Defendants' Objections to Court's Final Instructions to Jury, filed October 21, 1960	1023
Additions and Modifications to Final Instructions to Jury (pages 34 and 37), filed October 24, 1960	1044
Additions and Modifications to Final Instructions to Jury (pages 25, 23 and 39), filed October 24, 1960	1044
Addition to Final Instructions to Jury, filed October 25, 1960	1046
Defendants' Objections to the Amendments to the Court's Final Instructions to the Jury, filed October 26, 1960	1048

(HEADING OMITTED) Civil Action No. 4056-54 Filed September 21, 1960

ORDER

Upon Order of this Court dated August 25, 1960, a conference on certain matters and a pretrial conference on antitrust counterclaims of certain defendants was called for September 17, 1960. The Order of August 25, 1960 stated that one of the primary subjects of the Conference would be matters relating to the antitrust counterclaims filed by certain of the defendants. Paragraph II of that Order stated that:

"Each counterclaimant will be prepared to state at this conference the specific evidence by which it proposed to show (a) plaintiff's intent to exclude the counterclaimant from competing for government explosives traffic, (b) the conspiratorial conduct intended to accomplish such injury and (c) the actual impact of this conduct upon the counterclaimant's ability to compete for such traffic."

Paragraph III of the Order stated:

"Because of the possibility of confusion and prejudice which might result from the trial, at this time, of the 'price-fixing' counterclaim of certain defendants, the Court is giving serious consideration to ordering a separate trial on such counterclaims under the provisions of Rule 42(b), Federal Rules of Civil Procedure"

The Order further directed counsel to submit legal memoranda on the above-mentioned subjects not later than September 12, 1960.

All counsel having filed memoranda in conference with the Order of the Court, a conference was held on September 17, 1960. This conference was considered the first oral conference relating to the antitrust counterclaims, in view of the fact that much of the evidentiary material relating to these counterclaims was not made a matter of record until recently. The conference was therefore referred to by the Court as a pretrial conference insofar as these counterclaims were concerned.

Count II of the counterclaims filed by certain of the defendants in February, 1958 is the only remaining counterclaim involved in this case and reads as follows:

"4. Commencing prior to January 1, 1954 and at all times since that date Riss has unlawfully combined and conspired with other motor carriers (a) to injure and destroy the competition of this defendant and other rail carriers in the transportation of property in interstate commerce for the United States, (b) to monopolize such transportation and (c) to fix prices for such transportation. In furtherance of this combination and conspiracy Riss and other motor carriers have acted jointly to establish uniform rates over competing routes for the transportation of property in interstate commerce for the United States, and particularly for the transportation of ammunition and explosives, at unreasonably low levels. Riss participated in such joint action for the establishment of uniform rates for the purpose of diverting to itself and other motor carriers all such transportation for the United States."

Counterclaimants now restrict their claims against plaintiff to the claim stated in section (c) above.

The trial of this case has introduced many and complex issues for resolution by a jury which has been sitting for the better part of eight months. The Court has carefully examined the memoranda submitted by the parties and considered the arguments made at the pretrial conference of September 17, 1960. In the interests of justice, for the convenience of all parties and the jury, to avoid prejudicing the rights of any party, including those defendants who have not filed counterclaims in this action, and to avoid possible confusion of the jury in this involved and complex case, the Court is inclined to exercise its discretion under Rule 42(b), Federal Rules of Civil Procedure, and order a separate trial of these counterclaims. Accordingly, it is this 21st day of September, 1960,

ORDERED, that the counterclaim of defendant (66) contained in Count II of its counterclaim filed February 17, 1958, the counterclaim of defendant (72) contained in paragraphs 9 and 10 of its counterclaims filed February 18, 1958, and the counterclaims of defendants (8), (16), (21), (22), (23), (33),

(40), (41), (70), (76) and (78) contained in Count II of their counterclaims filed February 18, 1958 be separated for a trial to be had at some future date, such separate trial to be before a jury.

IT IS FURTHER ORDERED, that any part of the record in the present case of Riss & Co. v. Association of American Railroads, et al., Civil Action No. 4056-54 may be introduced without formal proof at the trial of the above-mentioned counterclaims subject to objections of relevancy and materiality.

IT IS FURTHER ORDERED, that the Court will reserve ruling on the plaintiff's Motion to Dismiss the said counterclaims and will also retain jurisdiction to consider any matters concerning said counterclaims which may be made a matter of record prior or subsequent to the conclusion of the trial of this case.

/s/ JOHN J. SIRICA
United States District Judge

(HEADING OMITTED) Civil Action No. 4056-54 Filed September 23, 1960

**PLAINTIFF'S MOTION FOR A SUMMARY JUDGMENT OR A
DIRECTED VERDICT AS TO DEFENDANTS'
ANTITRUST COUNTERCLAIMS**

Plaintiff hereby moves the Court to instruct the jury to return a verdict for the Plaintiff as to each of the antitrust counterclaims filed by the defendants in this case, or to enter a summary judgment for the Plaintiff as to those counterclaims upon the following grounds:

(1) No counterclaimant proposes to offer any proof that the collective price-fixing activity of the Plaintiff was intended to exclude the counterclaimant from the business of competing with truckers for Government traffic or to injure those railroads' ability to compete for such traffic.

(2) The proof that the counterclaimants do propose to offer shows that the purpose of such price-fixing was not to cut the level of rates on Government traffic but to stabilize or increase such rates.

(3) The evidence offered by the defendants in their defense to the Complaint conclusively establishes that collective price-fixing could not have excluded any of the counterclaimants from such competition or otherwise have injured the counterclaimants' ability to compete because collective price-fixing gave the truckers no competitive advantage that the railroads did not themselves enjoy before and throughout the period of the alleged price-fixing conspiracy.

Respectfully submitted,

/s/ A. Alvis Layne
(Other signatures omitted)

(HEADING OMITTED)

[Filed October 1960]

MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR A DIRECTED
VERDICT OR SUMMARY JUDGMENT AS TO DEFENDANTS' ANTI-
TRUST COUNTERCLAIMS

By its order of August 25, 1960, the Court ordered that a conference be held at which each counterclaimant was to state the specific evidence by which it proposed to show:

- "(a) The plaintiff's intent to exclude the counter claimant from competing for government explosives traffic;
- (b) The conspiratorial conduct intended to accomplish such an injury; and
- (c) The actual impact of this conduct upon the counter claimant's ability to compete for such traffic."

This pre-trial conference as to the counterclaims was held on September 17, at which time the defendants' counsel responded to this order with a statement of all of their evidence but made no direct response as to which evidence was responsive to requests (a), (b) or (c). On September 21, this Court ordered these counterclaims severed for a separate trial and reserved ruling on a motion to dismiss. This motion has been filed as a result of the counterclaimants' failure to amend their counterclaims to conform to

their proof. We shall show that the Plaintiff is now entitled either to a directed verdict or a summary judgment as to these counterclaims.

I

The Counterclaimants Have Declined To Amend Their Counter-claims to Conform¹ To Their Proof Or To Supply Proof To Support Their Counter-claims

The Court's order of September 21, 1960 correctly notes that the counterclaimants have restricted their claims to the alleged illegal price-fixing by abandoning allegations 4(a) and 4(b). It is equally clear, however, that they have not abandoned their charge that the intent of the illegal price-fixing was to establish a low level of rates on Government explosives traffic and thus divert to the truckers "all such transportation for the United States." This intent is spelled out in allegation 4(c) upon which counterclaimants now rely.^{1/}

At the pre-trial hearing the defendants' counsel maintained an extraordinarily flexible position. On the one hand, they contended that they

^{1/} "Commencing prior to January 1, 1954 and at all times since that date Riss has unlawfully combined and conspired with other motor carriers **** to fix prices for [the transportation of property in interstate commerce for the United States]. In furtherance of this combination and conspiracy Riss and other motor carriers have acted jointly to establish uniform rates over competing routes for the transportation of property in interstate commerce for the United States, and particularly for the transportation of ammunition and explosives, at unreasonably low levels. Riss participated in such joint action for the establishment of uniform rates for the purpose of diverting to itself and other motor carriers all such transportation for the United States."

Underlined words have been substituted for words "such transportation."

could rely solely upon collective price-fixing, without proof of an intent to use such price-fixing to injure the counterclaimants' ability to compete with the truckers for Government traffic. On the other hand, they declined to eliminate from their counterclaims their allegations that the alleged price-fixing conspiracy had such a purpose. The following excerpts from the transcript of the September 17 conference are illustrative of counterclaimants' ambiguous position.

"MR. McGLOTHLIN: ...we do not intend to try to prove monopoly or intend to try to prove exclusion of competitors as a necessary part of our case." (Tr. 17,396)

* * * * *

"MR. BALL: I might say if you will notice in our memorandum, that while we state exactly what we said in our opening statement where plaintiff was fully advised that we were limiting it to the price-fixing --

"THE COURT: You are limiting your cause of action to the price-fixing.

"MR. BALL: Well, that's what we always stated, but we say in the footnote here [defendants' memorandum] that if the Court does not regard that as significant that we will then go ahead and prove this intent." (Tr. 17,479-17,480)

* * * * *

"THE COURT: Now, wait a minute. Your whole case is based on illegal price-fixing, isn't it?

"MR. McGLOTHLIN: Well, Your Honor, let me say it is not." (Tr. 17,483)

The position of the Plaintiff as to defendants' allegation of a purpose to use the alleged price-fixing to injure the counterclaimants was stated as follows by Mr. Wright:

"Now, if their position is that they have a cause of action, without such an allegation, I assume they are in effect asking Your Honor at this time for leave to amend these counter claims accordingly.

"If that is their position, they should be so amended.

"Now, if their position is that they still think they can prove what they allege, that they don't want to amend, that ought to be clearly set out too, because in that case we have a different remedy than we have in the other case.

"If they are still claiming these allegations and still want to get the benefit of them, then, of course, our remedy is a motion for summary judgment." (Tr. 17,481)

The counterclaimants rejected the suggestion that such an amendment be made and none was made. Hence the only remedy the Plaintiff now has is a motion to direct the jury to return a verdict for the Plaintiff on the counterclaims on the ground that the defendants have conceded at the pre-trial conference that they have no evidence to prove what they have alleged. It is immaterial to the Plaintiff whether the motion is treated as one for summary judgment or a directed verdict. In either event, however, we believe that the jury should be advised of the fact that the counterclaimants offered no proof that would support their charge that the Plaintiff had conspired with other truckers to injure the counterclaiming railroads.

II

The Evidence Submitted By Counterclaimants Does Not Support But Refutes Their Allegation That The Price-Fixing Activity Of The Plaintiff Was Intended To Injure Them.

At the September 17 conference, counterclaimants presented, through Mr. Holt, a collection of documents which was their response to parts (a) and (b) of the Court's order of August 25. An examination of those documents reveals that they do not contain one line from which could be inferred an intent on the part of the Plaintiff to exclude any of the counterclaimants from the business of transporting Government explosives, or an intent to injure the ability of these railroads to compete for any Government traffic by a price-fixing conspiracy or any other illegal activity.

Mr. Holt undertook to summarize and describe to the Court "the evidence we propose to put in to show the existence and the nature of a price-fixing conspiracy...." (Mr. Holt, Tr. 17,418)

The most that could be claimed for the documents submitted by the counterclaimants through Mr. Holt was an effort to raise prices or to avoid price reductions. What the documents reveal is that it was the primary concern of Riss & Company to obtain Government business without reducing prices, wherever that was possible. However, the Court need not examine all of these documents to confirm that assertion.

The Court may assume, as in the case of any opening statement describing a plaintiff's evidence, that in describing these documents, Mr. Holt gave them the most favorable interpretation to the counterclaimants that could be placed upon this evidence. His explanation of the use by Riss of rate associations for the publication of rates was as follows:

"This, in other words, is simply a pooling among the members of the Association of all their quotations, giving everyone an opportunity to participate on an equal basis, ..." (Tr. 17,429)

* * * * *

"Another type of activity was the keeping of members of the rate bureaus posted on what rates were going to be filed by carriers so that anybody interested could get in on them; so that nobody could get in ahead of anybody else." (Tr. 17,441)

The purpose of such activity as stated by Mr. Holt is precisely the same as that of the railroad rate bureaus.

A 1947 document was described by Mr. Holt as supplying the first articulation of the possibilities

"... of motor carriers using the Government routing policy to get a substantial amount of Government traffic and still keep the rate up." (Tr. 17,420)

Mr. Holt described Document 57 as showing

"...another carrier checking a Riss tender which is being circulated in advance, which uses the interesting phrase:

'Since we do not wish to cut a rate, we call this to your attention with the thought that you would want to revise the Riss tender. '"
(Tr. 17,438)

If the phrase has any interest at all for this case, it lies in the fact that it shows activity aimed at raising rather than lowering a rate.

Mr. Holt then informs us that

"As late as July of 1957 Mr. Newbold of Riss writes to Roadway Express containing the sentence in the third paragraph:

'Walt, this is not written in any spirit of criticism, as I am certain that neither one of us would have intentionally filed something lower than the other. '" (Tr. 17,438-17,439)

Mr. Holt then describes a whole collection of counterclaimants' documents as dealing with

"...across-the-board percentage increases by which the machinery was easily set up through the Rate Bureaus and would probably be difficult to do without them. That way every carrier could increase its rates simultaneously if they decided a rate increase was desirable, and not run the risk of having any competitor take the business away from him." (Tr. 17,442)

Nowhere in the transcript of the September 17 hearing is there any reference by Mr. Holt or any other counsel to any document showing collective rate-cutting, yet this is the only kind of collective price-fixing that has ever resulted in an award of treble damages. In this connection we think the Anchor Serum case,^{2/} cited by Mr. Flynn as a fair statement "of our position on the fact of damage" (Tr. 17,449) recognizes that an intent to injure a competitor by causing an inability to compete is a necessary foundation of a treble damage prima facie case. He quotes the following language from the opinion in that case:

^{2/} American Cooperative Serum Ass'n. v. Anchor Serum Co., 153 F.2d 907 (1946)

"We can conceive of no fact which would more surely cause such inability than a cut in price by one's competitor. Here the parties stipulate that the serum produced by plaintiff and Anchor was of like grade and quality. Under these circumstances, coupled with the fact that the defendants did indirectly cut their prices regardless of the marketing agreement, a prima facie case was made, and the plaintiff was not required in the first instance to prove the absence of all other conceivable causes.

"Under this statute when a prima facie case is made, the burden shifts to the defendant, if it can do so, to show that the damage, if any, was otherwise caused." (Tr. 17,449-17,450; 153 F.2d 907, 912)

The counterclaimants, speaking through Mr. Flynn, thus rely upon an injurious purpose to connect their damage proof with the Plaintiff's allegedly illegal conduct. The case he cites clearly recognizes that the price-fixing activity complained of must be price-fixing aimed at injury of the complainant's ability to compete, to wit, price-cutting to a level that the complainant can't meet and stay in the business. At the same time, speaking through Mr. Holt, the counterclaimants have confessed that the only evidence of price-fixing that they have does not embrace such activity.

III

The Counterclaimants Have Not Amended Because They Know That The ACTA Case Does Not Hold That One Competitor May Collect Damages From Another Solely Because of Price-Fixing Activity

The ACTA case^{3/} was a private antitrust action by supplemental air carriers and the Aircoach Transport Association to enjoin concerted special rates of railroads made to military establishments for the carriage of passengers. Injunctive relief and treble damages were sought. The railroad rates were allegedly reduced rates made for the purpose of injuring

3/ Aircoach Transport Ass'n v. Atchison, Topeka & S.F. Ry. Co., 154 F. Supp. 106, 253 F.2d 877 (1958)

the air carriers' ability to compete for the traffic (154 F.Supp. 106-107). There, as here, both the plaintiff and the defendants engaged in collective price-fixing and no damages were claimed upon the ground that illegal price-fixing which had as its purpose merely the obtaining of business for the price-fixers would justify an award of damages or injunctive relief. The District Court granted the plaintiff's motion for summary judgment and entered an injunction, leaving for trial, however, the question of damages.

Some of the railroad counsel in this case were also counsel for the railroads in that case. They are well aware that the purpose of the reduced rates was sharply disputed by their clients and could not of course be resolved by a summary judgment. The issue before the Court of Appeals was therefore whether the price-fixing activities by which the defendants had admittedly created the reduced rates ("variable spot bids" and packaged bids") did or did not constitute a per se violation of the antitrust laws. The purpose of the price-fixing was not in issue on that appeal because this issue could only be resolved by a trial. In fact, the Circuit Court expressly stated at p. 887:

"It might be considered preferable, if Aircoach desires to pursue the assertions regarding a purpose to destroy competition, that this branch of the case should be the subject of a hearing, limited to that problem." (Emphasis added)

The District Court's judgment was reversed and the case did not go to trial. Therefore, no Court had any occasion to consider the sufficiency of the plaintiff's proof as to the allegedly injurious purpose of the defendants' per se violations of the Sherman Act. Neither the District Court's decision nor that of the Court of Appeals afford the slightest support for the railroads' extraordinary contention that they, unlike any other antitrust plaintiff, can make a valid prima facie case under the Sherman Act without proof that the alleged conduct they complain of was intended to injure them. Had they had any genuine conviction that a cause of action could be so stated, they would have amended their counterclaims accordingly.

Conclusion

It is clear that the counterclaimants have failed to produce, and indeed have no intention of offering, evidence which will support their price-fixing allegations as pleaded. Plaintiff is therefore entitled to a directed verdict for the Plaintiff and against the counterclaimants or a summary judgment upon these counterclaims.

Respectfully submitted,
/s/ A. Alvis Layne
(Other signatures omitted)

(CERTIFICATE OF SERVICE OMITTED)

(HEADING OMITTED) Civil Action No. 4056-54 Filed October 3, 1960
(Excerpts)

ADDITIONAL REQUESTS FOR INSTRUCTIONS

Joint action in sponsoring legislation is not actionable under the Sherman Act even if taken in furtherance of a combination to restrain interstate commerce. (Mills Novelty Co. v. The Borden Co., (S.D.N.Y., 1937) CCH Trade Reg. Rep., Par. 25,104). (3-10)

Joint action to persuade a sovereign power (federal, state or local government) to act, even if taken for the purpose of eliminating competition, is not actionable under the Sherman Act. (American Banana Co. v. United Fruit Co., 213 U.S. 347, 358 (1909).) (3-11)

* * *

Certain reports of trial examiners of the ICC have been introduced in evidence in this case. You are to disregard any statements, opinions, conclusions, or comments of any trial examiner contained in such reports except insofar as such opinions, conclusions, or comments were expressly adopted by the Interstate Commerce Commission or a division thereof. (7-12)

(HEADING OMITTED) Civil Action No. 4056-54 Filed October 5, 1960

ADDITIONAL REQUESTS FOR INSTRUCTIONS
(Second Series)

The Association of Western Railways and the Western railroad defendants request the granting of the attached instructions in addition to those previously requested on behalf of all defendants.

For the convenience of the Court, numbers appear at the bottom of each instruction which indicate the relation of these requests to those previously submitted to the Court on behalf of all defendants.

Respectfully submitted:

October 5, 1960

/s/ Stuart S. Ball

Lawful joint activities in pursuance of a lawful objective cannot be made into an unlawful conspiracy because of the particular choice of lawful methods
1 - 9A - (a)

You are instructed that to intend the normal and expected consequences of a lawful act is not to possess an intent which is unlawful under Sections 1 or 2 of the Sherman Act. 1 - 16E

The plaintiff contends that each defendant in pursuance of the alleged conspiracy participated in a "massive public relations defamatory campaign" against plaintiff "for the purpose of driving it out of business." You are instructed that publicity is not "defamatory" in the eyes of the law unless it contains untruthful statements of fact which untruths are of such a nature as necessarily to injure the business reputation of plaintiff or which untruths have been shown to have caused specific injury to plaintiff. Truthful statements are not defamatory no matter how injurious to plaintiff's business reputation; nor are expressions of opinion constituting fair comment on a matter of public interest defamatory in the eyes of the law. 3 - 12

Since it is conceded that the rate reductions of October 20, 1955, March 1, 1956, and April 1, 1956, were made in accordance with procedures approved under the Section 5a agreements covering various rate-making organizations, you should not consider, in determining whether or not these rate reductions were made in pursuance of the alleged pre-existing conspiracy, the extent or nature of these rate reductions. 4 - 1A

(HEADING OMITTED) Civil Action No. 4056-54 Filed October 5, 1960

MOTION OF DEFENDANT, THE PENNSYLVANIA RAILROAD
COMPANY, TO DISMISS OR FOR A DIRECTED VERDICT

The defendant, The Pennsylvania Railroad Company, hereby renews its motion to dismiss or for a directed verdict, and as grounds for this motion states as follows:

1. The intent and effect of the railroad rate reductions in 1955 and 1956 form the dominant issue in this case, and the United States Court of Appeals for the District of Columbia has directed this Court not to determine this dominant issue without first referring it to the Interstate Commerce Commission.
2. No substantial evidence has been introduced from which it can reasonably be inferred that the defendants, or any of them, entered into any conspiracy charged by the plaintiff or which the plaintiff has attempted to prove.
3. Assuming for purposes of argument that the existence of such a conspiracy can be inferred, the plaintiff has introduced no substantial independent evidence from which it could be inferred that this defendant joined such conspiracy or participated therein in any way whatsoever.
4. No substantial evidence has been introduced from which it can reasonably be inferred that this defendant had an intent to monopolize the business of transporting explosives for the United States Government, or had the intent of monopolizing any portion or aspect of the transportation business.

5. No substantial evidence has been introduced from which it can reasonably be inferred that any challenged rate reduction was made by this defendant for the purpose of eliminating competition rather than for the purpose of meeting competition.

6. The plaintiff has conceded that its business of transporting explosives for the United States Government was not adversely affected by the publicity, and the plaintiff offered no evidence whatsoever that any publicity adversely affected its commercial transportation business.

7. No substantial evidence has been introduced from which it can reasonably be inferred that actions for which the defendants, or any of them, are legally responsible, were the most substantial cause or the cause of any specific fraction of any alleged losses the plaintiff may have suffered.

8. This defendant incorporates by reference all of the other grounds supporting the motion for directed verdicts filed on behalf of any other defendant herein.

/s/ James H. McGlothlin

(CERTIFICATE OF SERVICE OMITTED)

(HEADING OMITTED) Civil Action No. 4056-54 Filed October 5, 1960

**MOTION OF DEFENDANT (5) CARL BYOIR &
ASSOCIATES, INC. FOR A DIRECTED
VERDICT**

The defendant (5) Carl Byoir & Associates, Inc. hereby moves the Court for a directed verdict at the close of all of the evidence and as grounds for this motion states as follows:

1. The intent and effect of the railroad rate reductions in 1955 and 1956 form the dominant issue in this case, and the United States Court of Appeals for the District of Columbia has directed this Court not to determine this dominant issue without first referring it to the Interstate Commerce Commission.

2. The plaintiff has introduced no substantial evidence that the defendants, or any of them, entered into a pre-existing conspiracy in violation of the antitrust laws.

3. The plaintiff has introduced no substantial evidence that this defendant was a member of any conspiracy in violation of the antitrust laws.

4. The acts alleged to have been done pursuant to an alleged pre-existing conspiracy are protected from antitrust liability by the First Amendment to the Constitution of the United States.

5. Attempts to obtain favorable action by Governmental officers or agencies, or by legislatures cannot be attacked under the antitrust statutes, as a matter of law.

6. Publicity upon matters of public interest cannot be attacked under the antitrust statutes, as a matter of law.

7. The plaintiff has introduced no substantial evidence that the defendants, or any of them, engaged in any such alleged act for a predatory and malevolent purpose.

8. The plaintiff has introduced no substantial evidence that this defendant did anything other than exercise rights guaranteed and protected by the First Amendment to the Constitution of the United States.

9. The plaintiff has introduced no substantial evidence that any injury, public or private, was caused by the alleged pre-existing conspiracy.

10. The challenged rate reductions are protected from antitrust liability by Section 5a (9) of the Interstate Commerce Act.

11. The plaintiff has introduced no substantial evidence that the challenged rate reductions were made pursuant to any pre-existing combination or conspiracy.

12. The plaintiff has introduced no substantial evidence that the challenged rate reductions were used for the purpose of eliminating competition rather than meeting it, which the Court of Appeals in Atchison, T. & S.F. Ry. Co. v. Aircoach Transport Assn., 102 App. D.C. 355, 253 F.2d 877 (1958), held necessary to defeat the protections of Section 5a(9) of the Interstate Commerce Act.

13. The plaintiff has introduced no substantial evidence that the challenged rate reductions caused any public injury.

14. The plaintiff has introduced no substantial evidence that any act for which the defendants are responsible caused the plaintiff any damage.

15. The plaintiff has established that acts for which no defendant can be held liable, such as ICC decisions, the Korean Armistice, and deficiencies in equipment, impaired its financial position, but has not shown that the effects of such causes cannot be segregated or attempted to segregate them.

16. The plaintiff has not introduced substantial evidence of the amount, if any, of its injury from the alleged conspiracy.

17. The plaintiff has not introduced substantial evidence that it was injured by any activity of which this defendant had any part or knowledge.

18. The evidence affirmatively proves that any injury, damages, or losses which plaintiff may have suffered resulted from causes for which no defendant is legally responsible.

19. This defendant incorporates by reference all of the other grounds supporting motions for directed verdicts filed on behalf of all defendants herein.

/s/ Powell Pierpoint

(CERTIFICATE OF SERVICE OMITTED)

(HEADING OMITTED) Civil Action No. 4056-54 Filed October 5, 1960

**MOTION OF DEFENDANT (4) EASTERN RAILROAD PRESIDENTS
CONFERENCE FOR A DIRECTED VERDICT**

Defendant, Eastern Railroad Presidents Conference, respectfully renews its motion of May 17, 1960, that the Court direct a verdict in its favor under Federal Rule 50 on the following grounds:

(1) Plaintiff has failed to prove that the activities of ERPC were not limited to the advocacy of ideas and without the protection of the First Amendment.

(2) Plaintiff has failed to prove that it was injured in its business or property as the result of any activity undertaken by or on behalf of ERPC.

(3) Plaintiff has failed to prove that ERPC participated in or authorized the rate reduction complained of in Paragraph 18 of the Complaint.

(4) Plaintiff has failed to prove that the rate reduction was not absolutely immunized by the Reed-Bulwinkle Act.

(5) Plaintiff has failed to prove that the rate reduction constituted an unlawful or destructive competitive practice within the meaning of the National Transportation Policy.

(6) Plaintiff has failed to introduce any evidence from which a jury could infer that ERPC entered into a conspiracy with any other defendant to obtain a monopoly of general commodities or government explosives traffic, or to eliminate the competition of plaintiff for that traffic.

(7) This defendant adopts and incorporates by reference all of the other grounds supporting the motions for directed verdict filed on behalf of all defendants herein.

/s/ C. Brewster Rhoads

(HEADING OMITTED) Civil Action No. 4056-54 Filed October 5, 1960

RENEWAL OF MOTION OF DEFENDANT (3), TRAFFIC EXECUTIVE
ASSOCIATION-EASTERN RAILROADS, FOR A DIRECTED VERDICT

The defendant, Traffic Executive Association-Eastern Railroads, hereby renews its motion to this Court for a directed verdict, and as grounds for this motion states as follows:

1. The plaintiff has introduced no substantial evidence that this defendant had adhered to, entered into, or performed any overt acts on behalf of any conspiracy charged by plaintiff or which plaintiff has attempted to prove.

2. Plaintiff has failed to prove that it suffered any damage as a result of the acts of the conspiracy charged by plaintiff.

3. This defendant incorporates by reference all of the other grounds supporting the motions for directed verdicts filed on behalf of other defendants herein.

/s/ Samuel E. Gates

(CERTIFICATE OF SERVICE OMITTED)

(HEADING OMITTED) Civil Action No. 4056-54

Filed October 5, 1960

MOTIONS OF THE ASSOCIATION OF WESTERN RAILWAYS AND THE
WESTERN RAILROAD DEFENDANTS FOR A DIRECTED VERDICT

Come now Defendants (2) The Association of Western Railways, (8) Atchison, Topeka & Santa Fe Railway Company, (16) Chicago, Burlington & Quincy Railroad Company, (21) Chicago, Milwaukee, St. Paul & Pacific Railroad Company, (22) Chicago & North Western Railway Company, (23) Chicago, Rock Island & Pacific Railroad Company, (31) Great Northern Railway Company, (33) Illinois Central Railroad Company, (40) Missouri-Kansas-Texas Railroad Company, (41) Missouri Pacific Railroad Company, (65) Northern Pacific Railway Company, (70) St. Louis-San Francisco Railway Company, (72) Southern Pacific Company, (76) Union Pacific Railroad Company, (78) Wabash Railroad Company, and (80) Minneapolis, St. Paul & Sault Ste. Marie Railroad, all parties having rested, and severally move the Court for a directed verdict in their favor under Rule 50 of the Federal Rules of Civil Procedure. This motion is made for all of the reasons stated in the motions for directed verdict made by these defendants and by other defendants at the close of the plaintiff's case in chief, for all of the reasons stated in motions which have been or are now being filed on behalf of other defendants, and for the following additional reasons:

1. That the uncontroverted testimony of Daniel P. Loomis shows that there were only four meetings of the Executive Committee of The Association of Western Railways in the period 1949 through 1957; that the first of these meetings of the Executive Committee did not occur until 1954; and that at none of these meetings was there discussion of any matters germane in any

way to the present lawsuit. Under these circumstances, the defendant railroads on behalf of whom this motion is made cannot be charged with any knowledge of an unlawful conspiracy or of any participation in any such conspiracy by reason of their membership in such Executive Committee. This is particularly significant in that these defendants were obviously selected by the plaintiff solely because they were the railroads comprising such Executive Committee; and on argument of the prior motions, plaintiff's counsel could advance no other reason for keeping these railroads in the case.

2. That the undisputed testimony of Daniel P. Loomis shows that the participation of the Western railroad defendants in the proceedings before the Interstate Commerce Commission was in each instance based solely upon the letters and reports already in evidence as plaintiff's exhibits, and not upon any prior agreement or meeting or report, and that such participation was consequently intended solely to achieve the lawful objectives set forth in those letters and reports.

3. That the undisputed testimony of Major General Lasher, Colonel Flanagan and the other witnesses called by these defendants shows that the rate reductions on explosives made by these defendants on October 20, 1955, and March 1, 1956, were in response to demands made by the Department of Defense for reduced rates.

4. That this undisputed testimony as to the manner in which these rate reductions were determined upon by the non-defendant rate bureaus to which these defendants belonged shows beyond question that these rate reductions were not the result of any pre-existing conspiracy and did not represent joint or conspiratorial action in any way whatsoever, and were not uniform.

5. That this undisputed testimony shows that, to the extent that these railroads made the rate reductions complained of by plaintiff, such reductions were made either to meet the competition of motor carriers or to meet the competition of other railroads.

6. That the undisputed evidence, including the admissions contained in correspondence in plaintiff's files, the admissions made by plaintiff's officers under oath in various lawsuits and Interstate Commerce Commission proceedings, and the undisputed testimony of shipper witnesses and former employees establishes that there were many causes for the decline in the revenues and profits of Riss & Company which had nothing whatsoever to do with any action of the defendants of which plaintiff makes complaint in this lawsuit; and that in the fact of this evidence plaintiff has failed to sustain its burden of proving that the activities of which it complains were either the cause of plaintiff's loss of revenues, profits and net worth or a more substantial cause than any other factor.

7. That the undisputed testimony of Messrs. Gordon and Field shows that the revenue and net worth figures reported by plaintiff in its reports to the Interstate Commerce Commission do not, standing alone, properly reflect in any substantial way the results of the operations of plaintiff company in view of the numerous transactions between the plaintiff and three other corporations owned by the stockholders controlling plaintiff and between plaintiff, these affiliated companies, and the members of the Riss family.

8. That plaintiff's claim for damages is based upon revenues, profits and net worth resulting in substantial part from operations by plaintiff in violation of law; and that plaintiff has not offered any substantial evidence by which the jury can determine how much of the revenues, profits and net worth on which plaintiff relies for its proof of damages were obtained through lawful operations as distinguished from such unlawful operations.

9. That plaintiff has not shown by evidence competent against any of these defendants that such defendants engaged in activities which were unlawful in themselves; and that plaintiff has failed to introduce any substantial evidence whatsoever inconsistent with the fact that such lawful actions were taken for the purpose and with the intent to bring about the natural consequences of such lawful actions. Under the rule of law that a person is presumed to intend the normal consequences of his actions, no one can be guilty of an unlawful

conspiracy by joining in lawful activities solely for the purpose of bringing about the results normally to be anticipated from the taking of such lawful action.

10. That the defendants making motions have called to the stand witnesses in position to know whether these moving defendants know or had knowledge of any unlawful combination or whether the actions taken by these defendants were taken for an unlawful purpose, and have, without contradiction by any substantial evidence, testified both to the lack of knowledge of these defendants and as to their lack of unlawful purpose or intent.

11. That the undisputed testimony of Daniel P. Loomis shows that The Association of Western Railways did not participate in or have knowledge of the rate negotiations which preceded and led to the rate reductions complained of, and that said defendant The Association of Western Railways is therefore not chargeable under any theory with any of the activities which alone would justify the awarding of damages in this case.

12. That the undisputed evidence shows that, except in minor instances, the Minneapolis, St. Paul & Sault Ste. Marie Railroad, the Great Northern Railway Company, the Northern Pacific Railway Company, and the Southern Pacific Company never entered in any of the rate reductions which brought the rates to Class 45 minimum 40,000 pounds and 80% of Class 45 excess loaded in the same car.

Respectfully submitted,
/s/ Stuart S. Ball
(Other signatures omitted)

(CERTIFICATE OF SERVICE OMITTED)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RISS & COMPANY, INC.,	)	
Plaintiff,	)	
vs.	)	Civil Action
	)	No. 4056-54
ASSOCIATION OF AMERICAN	)	
RAILROADS, ET AL.,	)	
Defendants.	)	

AFFIDAVIT

STATE OF ILLINOIS)
COUNTY OF COOK) ss.

ERNEST C. PIERRE, being first duly sworn, deposes and says that:

1. He is the same Ernest C. Pierre who testified in the instant proceeding on June 29 and 30, 1960, and on September 14, 1960.
2. His testimony on those occasions is set forth in Volumes 80, at pages 13, 313-13, 399, 81, at pages 13, 416-13, 538, and 103, at pages 17, 045-17147.
3. In the course of that testimony, he fully stated his qualifications to testify concerning rate matters (Vol. 80, pages 13, 314-13, 317).
4. In the course of that testimony, he also identified and described the qualifications of the persons assisting him in the preparation of certain studies made on behalf of defendants in the instant proceedings (Vol. 80, pages 13, 319-13, 324; Vol. 103, pages 17, 047-17, 048).
5. In addition to the studies described in his prior testimony, he and the persons previously named, working under his supervision and control, have prepared additional studies on behalf of these defendant railroads which have counterclaims pending.

6. These additional studies include the following:

a. A determination of the principal points between which Riss & Co., Inc., transported ammunition and explosives in the period February 18, 1954, through December 31, 1957.

b. A determination of the quantity of ammunition and explosives transported by Riss & Co., Inc., between such points on each date during that period.

c. A determination of the rate at which Riss & Co., Inc. transported each shipment of ammunition and explosives between such points during that period.

d. A determination of the rate at which motor carriers competing with Riss offered to transport ammunition and explosives between such points on each date upon which Riss actually transported those commodities between those points.

e. A determination of the rates offered by Riss and by those competing motor carriers between such points before, after, and between the dates upon which Riss actually transported ammunition and explosives between such points.

f. A determination of the routes over which the rates offered by Riss & Co., Inc., were applicable, including all instances where Riss & Co. offered identical rates over competing routes.

g. A determination of the routes over which the rates offered by the competing motor carriers were applicable.

h. A determination of the rail rates offered between such points on the dates upon which Riss actually transported ammunition and explosives between such points.

i. A determination of the rail routes between such points over which these rates applied, and the divisions of rail revenues applicable to movements over each such route.

7. The information concerning the Riss movements of ammunition and explosives was obtained from Plaintiff's Exhibits 37, 37A, 37B, and 37C.

The information concerning Riss rates and routes was obtained from copies of Riss Section 22 quotations and from motor carrier rate bureau quotations in which Riss participated. These documents were furnished by Riss from its files. The information concerning the rates and routes of other motor carriers was obtained from the motor carrier rate bureau quotations furnished by Riss and from the public files of the Military Traffic Management Agency. The rail rates were secured from the Section 22 quotations set out in Plaintiff's Exhibits 219B through 219K, and from the rail tariffs referred to therein. The rail routes were secured from the applicable tariffs or quotations, and the rail divisions from the applicable division sheets or agreements.

8. Based upon these studies, certain exhibits have been prepared. The first of these shows the following information:

- a. The origin and destination of specific movements of ammunition and explosives transported by Riss.
- b. The date of each movement or the dates of each successive series of movements.
- c. The quantity transported for each such movement.
- d. The rate at which such traffic was handled by Riss.
- e. The quotation setting forth the Riss rate and the routes specified in each quotation.
- f. The quotation of other motor carriers effective on each such date or dates specifying the identical rate, and the routes over which such identical rate applied.
- g. The names of the counterclaimant railroads serving each origin and destination point as line-haul carriers, which offered to perform the service required.
- h. The rail rate for such service, and the gross revenue which would have accrued to each origin and destination railroad, having a counterclaim, had it participated in the transportation of the traffic handled by Riss, determined according to the applicable

military policies concerning allocation of traffic and the applicable rail agreements for divisions of revenue.

9. This exhibit was served upon the Court and upon Riss & Co., Inc., on September 2, 1960, as pages 10 through 234 of the Revised Memorandum of Counterclaimants with Respect to Count II of Their Counterclaims, and said pages are incorporated herein by reference and made a part hereof.

10. Pages 10 through 234 of Said Memorandum correctly reflect information derived from the studies referred to above and are true and correct to the best of his present knowledge information, and belief, with the following exceptions:

a. The gross revenue figure for the Pennsylvania Railroad set forth at page 79, which was stated as \$1,299.46, should be \$4,608.92.

b. The information contained on pages 100 and 101 has been found to be incorrect and these pages should be deleted.

c. The dates for the shipments designated "B" on page 159, which were shown as October 11, 12, 13, 1954, should be October 11, 12, 13, 1955.

11. Based upon the information contained in this exhibit as corrected, the counterclaimant railroads would have received the following gross revenues from the transportation of ammunition and explosives performed by Riss:

NAME OF COUNTERCLAIMANT	AMOUNT
Atchison, Topeka & Santa Fe Ry.	\$1,006,958.25
Chicago, Burlington & Quincy R.R.	531,450.19
Chicago, Milwaukee, St. Paul & Pacific R.R.	173,168.99
Chicago, Rock Island & Pacific R.R.	263,584.81
Illinois Central R.R.	10,016.03
Missouri-Kansas-Texas R.R.	140,092.98
Missouri Pacific R.R.	200,878.94

NAME OF COUNTERCLAIMANT	AMOUNT
Pennsylvania R. R.	\$ 620,866.87
St. Louis-San Francisco Ry.	85,714.77
Southern Pacific Co.	286,682.07
Union Pacific R. R.	747,803.22
Wabash R. R.	97,999.49
TOTAL	\$4,165,216.61

12. Each of the movements of ammunition and explosives included in the exhibit referred to above represents an instance in which the rate established by Riss and by other motor carriers was equal to or below the then prevailing rail rate, and where the quantity involved exceeded the established rail carload minimum weight. He excluded all instances in which Riss was awarded traffic at rates higher than the prevailing rail rate, or where the quantity involved was less than a minimum rail carload, since such traffic may not have been competitive traffic.

13. In addition to the foregoing exhibit, there are now in the course of preparation exhibits which will show Riss rates and rates of other motor carriers at the time of each movement and for substantial periods of time preceding, following, and between each movement referred to in the exhibit described above. These exhibits will show the source of each rate and the effective period for each such rate between each pair of points set forth in the prior exhibit. These exhibits will show that between such points, Riss and competing motor carriers quoted substantially identical rates for volume shipments at all relevant times.

14. There are also in course of preparation exhibits reflecting the net revenues which each counterclaimant railroad would have received for the transportation services described in paragraph 8 above. These net revenues are being computed on the basis of the costs set forth in C. & O.

Exhibits 29 through 39. Based upon these costs, it is presently estimated that the net revenue loss to the counterclaiming railroads is \$3,005,678.24.

Further alliant saith not.

/s/ Ernest C. Pierre

(Notary omitted)

(HEADING OMITTED) Civil Action No. 4056-54

AFFIDAVIT OF R. W. TALBOT

COMMONWEALTH OF PENNSYLVANIA)

COUNTY OF PHILADELPHIA)

ss

I, R. W. TALBOT, being duly sworn according to law, depose and say that I am General Manager of Freight Rates of The Pennsylvania Railroad Company, a defendant in the above action; that I am authorized to take this affidavit on its behalf and do so, and that the facts stated herein are true and correct to the best of my knowledge, information and belief.

During the period February 18, 1954, to the present time I have held the following positions with The Pennsylvania Railroad Company:

November 1, 1953, to October 1, 1955 -

Assistant to General Traffic Manager

November 1, 1955, to present time -

General Manager of Freight Rates

The Pennsylvania Railroad Company served the following Government installations and others during the period February 18, 1954, to the present time:

Earle, New Jersey

Indiana Arsenal, Charlestown or Watson, Indiana

Ravenna Arsenal, Atlas, Ohio

Naval Powder Factories, Indianhead, Maryland

Army Chemical Center, Edgewood, Maryland

Elkton, Maryland

In serving the above-listed installations and others The Pennsylvania Railroad Company participated in through routes and joint rates applicable thereto between the points listed below and other points:

Shumaker, Arkansas to Earle, New Jersey
Herlong, California to Charlestown, Indiana
Avondale, Colorado to Charlestown, Indiana
Joliet, Illinois to Atlas, Ohio
Charlestown, Indiana to Avondale, Colorado
Charlestown, Indiana to Bellemont, Arizona
Charlestown, Indiana to Defense, Texas
Charlestown, Indiana to Hastings, Nebraska
Charlestown, Indiana to Herlong, California
Charlestown, Indiana to Houston, Texas
Charlestown, Indiana to Lake City, Missouri
Charlestown, Indiana to McAlester, Oklahoma
Charlestown, Indiana to Ordnance, Oregon
Charlestown, Indiana to Parsons, Kansas
Charlestown, Indiana to Provo, South Dakota
Charlestown, Indiana to Sidney, Nebraska
Charlestown, Indiana to Warner, Utah
DeSoto, Kansas to Atlas, Ohio
DeSoto, Kansas to Indianhead, Maryland
Parsons, Kansas to Atlas, Ohio
Edgewood, Maryland to Ordnance, Oregon
Elkton, Maryland to McAlester, Oklahoma
Indianhead, Maryland to DeSoto, Kansas
Indianhead, Maryland to Shumaker, Arkansas
Indianhead, Maryland to Thorne, Nevada

The Pennsylvania Railroad Company encountered substantial motor carrier competition for traffic, including ammunition and explosives traffic, at these and other points during the period February 18, 1954, to the present time.

The Motor Carriers established rates to and from these and other points which were less than or equal to the rates established by The Pennsylvania Railroad Company. In many instances such motor carrier rates were quoted on behalf of two or more competing motor carriers, by joint quotation through rate bureaus, or otherwise. Motor carriers carried pursuant to such rates traffic, including ammunition and explosives, which would have been carried by The Pennsylvania Railroad Company but for the existence of the aforesaid motor carrier rates.

The Pennsylvania Railroad Company was at all times ready, willing and able to carry the traffic so diverted.

/s/ R. W. Talbot

R. W. Talbot
General Manager of Freight Rates
The Pennsylvania Railroad Company

(Notarization omitted)

(Certificate of Service omitted)

(HEADING OMITTED) Civil Action No. 4056-54 Filed October 6, 1960

AFFIDAVIT

STATE OF ILLINOIS)

ss.

COUNTY OF COOK)

E. A. THARP, being first duly sworn, on oath, deposes and says:

1. I am the General Freight Traffic Manager of the Chicago, Rock Island & Pacific Railroad Company. I have held that position since June, 1955. From November, 1952, to June, 1955, I was Assistant General Freight Traffic Manager, and from September, 1951, to November, 1952, I was Freight Traffic Manager. From July, 1942, to September, 1951, I was Assistant Freight Traffic Manager.

2. That the Chicago, Rock Island & Pacific Railroad Company at all times from 1950 to the present has provided rail service for numerous points for the transportation of Government ammunition and explosives among which are the following:

Shumaker (N. A. D.), Arkansas

McAlester (N. A. D.), Haywood or Savanna, Oklahoma

San Jacinto Ordnance, Houston, Texas

3. That prior to 1950 the Chicago, Rock Island & Pacific Railroad Company, together with other railroads serving the same points, including those listed in paragraph 2 herein, transported approximately 90 percent of all Government ammunition and explosives.

4. That prior to 1950 motor carriers, except to a very limited

extent, had not quoted to the Government rates on volume movements of ammunition and explosives to or from points served by the Chicago, Rock Island & Pacific Railroad Company, including those listed in paragraph 2 herein, equal to or below those offered by the Chicago, Rock Island & Pacific Railroad Company.

5. That beginning with 1950 and increasing rapidly, at least through 1955, motor carriers quoted numerous rates on volume movements of Government ammunition and explosives to and from points served by the Chicago, Rock Island & Pacific Railroad Company, including those listed in paragraph 2 herein, at or below those quoted by the Chicago, Rock Island & Pacific Railroad Company, which rates resulted in large quantities of Government ammunition and explosives, which would have been transported by the Chicago, Rock Island & Pacific Railroad Company under the prior rates, being transported by motor carriers.

6. That during this period the Chicago, Rock Island & Pacific Railroad Company had ready and available equipment and labor necessary to transport such ammunition and explosives traffic, and had in effect routes and rate quotations for the transportation of Government ammunition and explosives to and from the points served by the Chicago, Rock Island & Pacific Railroad Company, including those listed in paragraph 2 herein, which would have enabled the Chicago, Rock Island & Pacific Railroad Company to transport said Government ammunition and explosives traffic.

7. Based upon these facts, it is my belief that but for the rates quoted by motor carriers during this period, the Chicago, Rock Island & Pacific Railroad Company would have transported substantial additional quantities of ammunition and explosives from and to the points listed in paragraph 2 herein.

Further affiant saith not.

/s/ E. A. Tharp

E.A. Tharp

(Notarization omitted)

(HEADING OMITTED) Civil Action No. 4056-54 Filed October 10, 1960

AFFIDAVIT

STATE OF ILLINOIS)
 ss.
COUNTY OF COOK)

G. H. REHM, being first duly sworn, on oath, deposes and says:

1. I am the General Freight Traffic Manager of the Chicago, Burlington & Quincy Railroad Company. I have held that position since February, 1955. From July, 1952, to February, 1955, I was Freight Traffic Manager and from March, 1950, to July, 1952, I was Assistant Freight Traffic Manager.

2. That the Chicago, Burlington & Quincy Railroad Company at all times from 1950 to the present has provided rail service for numerous points for the transportation of Government ammunition and explosives among which are the following:

Savanna Ordnance, Proving Ground, Illinois
Iowa Ordnance Depot, West Burlington, Iowa
Cornhusker Ordnance Depot, Coplant, Nebraska
Nebraska Ordnance, Firestone, Nebraska
Hastings (N. A. D.), Nebraska
Sioux Ordnance, Sidney, Nebraska
Black Hills Ordnance, Provo, South Dakota

3. That prior to 1950 the Chicago, Burlington & Quincy Railroad Company, together with other railroads serving the same points, including those listed in paragraph 2 herein, transported approximately 90 percent of all Government ammunition and explosives.

4. That prior to 1950 motor carriers, except to a very limited extent, had not quoted to the Government rates on volume movements of ammunition and explosives to or from points served by the Chicago, Burlington & Quincy Railroad Company, including those listed in paragraph 2 herein, equal to or below those offered by the Chicago, Burlington & Quincy Railroad Company.

5. That beginning with 1950 and increasing rapidly, at least through 1955, motor carriers quoted numerous rates on volume movements of Government ammunition and explosives to and from points served by the Chicago, Burlington & Quincy Railroad Company, including those listed in paragraph 2 herein, at or below those quoted by the Chicago, Burlington & Quincy Railroad Company, which rates resulted in large quantities of Government ammunition and explosives, which would have been transported by Chicago, Burlington & Quincy Railroad Company under the prior rates, being transported by motor carriers.

6. That during this period the Chicago, Burlington & Quincy Railroad Company had ready and available equipment and labor necessary to transport such ammunition and explosives traffic, and had in effect routes and rate quotations for the transportation of Government ammunition and explosives to and from the points served by the Chicago, Burlington & Quincy Railroad Company, including those listed in paragraph 2 herein, which would have enabled the Chicago, Burlington & Quincy Railroad Company to transport said Government ammunition and explosives traffic.

7. Based upon these facts it is my belief that but for the rates quoted by motor carriers during this period, the Chicago, Burlington & Quincy Railroad Company would have transported substantial additional quantities of ammunition and explosives from and to the points listed in paragraph 2 herein.

Further affiant saith not.

/s/ G. H. Rehm

G. H. Rehm

(Notarization omitted)

(HEADING OMITTED) Civil Action No. 4056-54 Filed October 7, 1960

AFFIDAVIT OF RICHARD J. FLYNN

DISTRICT OF COLUMBIA)
CITY OF WASHINGTON) ss.

RICHARD J. FLYNN, having been first duly sworn, deposes and says:

1. He is of counsel for the Western railroad counterclaimants in

3. He has heretofore served upon counsel for the plaintiff copies of these and other documents found in the plaintiff's files, with a request that the plaintiff admit that such copies were true copies of documents so found, and that the documents so found were genuine and in all respects what they purported on their face to be; and counsel for the plaintiff returned the said copies to him agreeing to authenticate said documents as true copies of original documents found in the files of Riss & Co.

/s/ Richard J. Flynn
Richard J. Flynn

(HEADING OMITTED) Civil Action No. 4056-54 Filed October 7, 1960

STATE OF NEVADA)
COUNTY OF CLARK) ss.

1. I am the Assistant Vice-President of Traffic of the Atchison, Topeka & Santa Fe Railroad. I have been employed in the Traffic Department of the Atchison, Topeka & Santa Fe Railroad for about 33 years, with the exception of one year which was spent in the Operating Department.

2. That the Atchison, Topeka & Santa Fe Railroad at all times from 1950 to the present has provided rail service for numerous points for the transportation of Government ammunition and explosives among which are the following:

Navajo Ordnance Depot, Bellemont, Arizona

Camp Irwin, Barstow, California

Fallbrook, California

Port Chicago (N. A. D.) California

Pueblo Ordnance Depot, Avondale, Colorado

Joliet Arsenal, Joliet, Illinois

Sunflower Ordnance, De Soto, Kansas

Wingate Ordnance, Wingate, New Mexico

San Jacinto Ordnance, Houston, Texas

3. That prior to 1950 the Atchison, Topeka & Santa Fe Railroad, together with other railroads serving the same points, including those listed in paragraph 2 herein, transported approximately 90 per cent of all Government ammunition and explosives.

4. That prior to 1950 motor carriers, except to a very limited extent, had not quoted to the Government rates on volume movements of ammunition and explosives to or from points served by the Atchison, Topeka & Santa Fe Railroad, including those listed in paragraph 2 herein, equal to or below those offered by the Atchison, Topeka & Santa Fe Railroad.

5. That beginning with 1950 and increasing rapidly, at least through 1955, motor carriers quoted numerous rates on volume movements of Government ammunition and explosives to and from points served by the Atchison, Topeka & Santa Fe Railroad, including those listed in paragraph 2 herein, at or below those quoted by the Atchison, Topeka & Santa Fe Railroad, which rates resulted in large quantities of Government ammunition and explosives which would have been transported by the Atchison, Topeka & Santa Fe Railroad under the prior rates being transported by motor carriers.

6. That during this period the Atchison, Topeka & Santa Fe Railroad had ready and available equipment and labor necessary to transport such ammunition and explosives traffic, and had in effect routes and rate quotations for the transportation of Government ammunition and explosives to and from the points served by the Atchison, Topeka & Santa Fe Railroad, including those listed in paragraph 2 herein, which would have enabled the Atchison, Topeka & Santa Fe Railroad to transport said Government ammunition and explosives traffic.

7. Based upon these facts, it is my belief that but for the rates quoted by motor carriers during this period, the Atchison, Topeka & Santa Fe Railroad would have transported substantial additional quantities of ammunition and explosives from and to the points listed in paragraph 2 herein.

Further affiant saith not.

/s/ T. M. Caiazza
T. M. Caiazza

(Notarization omitted)

(Certificate of Service omitted)

(HEADING OMITTED) Civil Action No. 4056-54 Filed October 7, 1960

ADDITIONAL REQUESTS FOR INSTRUCTIONS
(Third Series)

The Association of Western Railways and the Western railroad defendants request the granting of the attached instructions in addition to those previously requested on behalf of all defendants.

For the convenience of the Court, the numbers appearing at the bottom of the instructions indicate the relation of these requests to those previously submitted to the Court on behalf of all defendants.

Respectfully submitted:

/s/ Stuart S. Ball
Stuart S. Ball
Attorney for The Association of
Western Railways and the Western
Railroad Defendants

Plaintiff has conceded that Carl Byoir and Associates, Inc., was not at any time employed by any defendant other than Eastern Railroad Presidents Conference, and was not employed on behalf of any other defendant, not a member of ERPC.

(Answer to Interrogatories E-I-19a and E-I-19b of the
Western railroad defendants served on plaintiff July 9,
1958.) (A-13A)

Before the plaintiff can be said to have shown that an action was taken by any defendant with knowledge of the existence of the alleged conspiracy, and for the purpose of furthering the objectives of the alleged conspiracy, plaintiff must show that the particular officer or employee of that defendant who took the action had himself personal knowledge of the alleged conspiracy and took action for the purpose of furthering the objectives of the alleged conspiracy.

The Supreme Court has held that a state is without power to cancel the interstate operating authority of a motor carrier, and that the only procedure by which a state may bring about such a result is by petition to the Interstate Commerce Commission invoking the statutory powers of the Commission over operating authorities which it has granted (Castle v. Hayes Freight Lines, 348 U.S. 61, 1954). (2-4A)

You are instructed that the plaintiff, after its petition for reconsideration of the report and order in PUCO v. Riss & Company, MC-C-1413 had been denied, had the right to appeal to the courts for a review of said order to cease and desist violations of the Commission's safety regulations; and that by so appealing to the courts, plaintiff could have attacked any finding of fact in the report and order which was not supported by competent evidence. (2-5A)

Before plaintiff can rely on any press release, article, or other utterance or publication, either as evidence of the existence of the alleged conspiracy or as an overt act in furtherance of such conspiracy, plaintiff must first

show that such utterance or publication was outside the protection of the First Amendment. In other words, plaintiff has the burden of proving that such publication was untruthful with respect to a material fact, and that such untruth was in itself defamatory, as I have elsewhere defined that term.

In order to rely on any defamatory utterance or publication, either as evidence of the existence of the alleged conspiracy or as an overt act in furtherance of such conspiracy, plaintiff also has the burden of proving that such defamatory utterance or publication was known to the defendant making it to be untrue.

The value of a business at any particular time cannot be less than the going concern value or the liquidating value, whichever be the higher amount.

(5-17C-(a)

(HEADING OMITTED) Civil Action No. 4056-54 Filed October 10, 1960

ORDER

All defendants having renewed their Motions for a Directed Verdict at the close of all the evidence, and the Court having heard argument on said motions, it is this 10th day of October, 1960

ORDERED, That the Motions for a Directed Verdict made by all defendants at the close of all the evidence be, and the same hereby are, denied.

/s/ John J. Sirica

United States District Judge

(HEADING OMITTED) Civil Action No. 4056-54

INSTRUCTIONS TO THE JURY

October 11, 1960

FIRST DRAFT

Ladies and gentlemen of the jury, we are now approaching what, in the final analysis, is the most important part of this case. After the better part of ten months of trial, we have now reached the place where there are no more witnesses to be heard, no more exhibits to be read and no further

arguments by counsel. I know that I speak for counsel on both sides when I say that your unfailing attention, your patience and your interest in this long and complex case should be a model for other juries. Your responsibilities are great, but you have shown by your attitude that you are fully aware of them. The fact that you have been selected for jury duty in such an important case as this one is a tribute to your qualifications, and indicates the confidence that all counsel have reposed in you.

Your untiring efforts and your obvious sense of duty are worthy of the greatest commendation. Blackstone, a great jurist of England and one whose writings were so familiar to our Founding Fathers, called the jury system "the glory of the English Law." It is certainly one of the splendid achievements of our Western civilization. You have served here in the finest tradition of that system. The Court, at this time, wishes also to formally extend its compliments to the able counsel on both sides for the manner in which they have conducted themselves and to thank them for the continued cooperation which they have shown to the Court during the many days of the trial, and the many conferences and proceedings prior to trial.

As you will recall, at the beginning of the case the Court gave you a preliminary instruction, in the hope that because of the nature of the case, those remarks would be of assistance to you during the course of the trial. I mentioned to you at that time and during the course of the trial, that at the end of the case you would receive the Court's final instructions on the law. These instructions that I now give you are to be your guide in applying the law to the facts. These instructions, then, are the final step before you retire to the jury room to deliberate upon the evidence in this controversy, and to arrive at your verdict.

The word 'verdict' has ancient and important roots in our legal system. Our English word 'verdict' is composed of the parts of two Latin words. V-e-r, is taken from the Latin word 'veritas', meaning the truth, D-i-c-t, is the root of the Latin word 'dicto', meaning to speak. So that,

literally, your responsibility in this case, as in any case, in returning a verdict, is to speak the truth as to the rights, responsibilities and obligations of the parties to this litigation. After your deliberations, then, you will be called upon to speak the truth regarding your findings in this case. (Sebal v. Bass, C.A. No. 1582-55)

You have taken an oath to try this case according to the law and the evidence. As I have told you on an earlier occasion, your responsibilities as jurors are great, as is my obligation and solemn duty in this case. Your oath includes the words "according to the law." My duty is to acquaint you with that law. My duty and responsibility is to instruct you as to the law that will govern you in reaching your verdict. It is your responsibility and duty, under your oaths, to accept this law as I shall state it to you. You, however, are the exclusive judges of the facts. (Standard Instruction #1). The sole power to determine the credibility of witnesses, to determine who has testified to the truth where there is some question in issue, to judge and determine the weight of the evidence, to find the facts and apply the law thereto, as it is outlined to you by the Court and to then declare your result, rests with you. In this regard, I want to make two observations to you at this time. First of all, if, during the course of these instructions I have occasion to refer to some of the evidence in the case, my recollection of the evidence is not binding on you. It is your recollection and your recollection alone, which must guide you in reaching your verdict. Secondly, as a matter of explanation, I want to say to you that the judges of the Federal Courts have a right, under the law, to comment on the evidence. This means that the judge, in the course of his instructions to the jury, may take the testimony of the individual witnesses, may discuss the testimony pro and con, and may say to you "I believe this witness," or "I do not believe him." "I believe this much of his testimony - I don't believe the rest," or can make whatever comment he sees fit upon the evidence. This power of a Federal Judge is subject only to the qualification that the Judge

must say, on the record, the magic words: "Of course, my views are not binding upon you." However, it does seem to me that if a Judge is entitled to any respect in the courtroom, the comments he makes from the bench in giving his instruction must have some effect upon the jury. Consequently, I do not believe that a Judge can comment upon the evidence and then say "of course, my comments are not binding upon you," without having his remarks on the evidence affect the jury in some way. As a matter of practice then, this Court, at least, does not comment upon the evidence. It is for you alone to determine, under the Court's instructions, what witnesses are worthy of belief and what facts have been established or have not been established.

Therefore, if the Court has said or done anything during this trial which has suggested or indicated to you that it is inclined to favor the claims or position of any party, I instruct you to disregard it. I have not expressed or intimated any opinion to you as to what witnesses are worthy of belief or disbelief, which facts are established, which facts have not been established, or what inferences should be drawn from the evidence. (Standard Instruction No. 13, as modified.)

Before instructing on the law as specifically applied to this case and reviewing for you some of the evidence, I will now comment on some general principles of law which you should apply in your deliberations on the specific facts of this case. First, all these instructions I give you should be considered as a whole. If, in them, any rule, direction or idea be stated in varying ways, no emphasis thereon is intended by me, and none must be inferred by you. For that reason, you are not to single out any certain sentence, or any individual point or instruction and ignore the others, but you are to consider all the instructions as a whole and to regard each in the light of all the others. (Standard Instruction #2).

You are not bound to accept or to decide in conformity with the testimony of a number of witnesses which does not produce conviction in your

mind as against the declaration of a lesser number of witnesses or other evidence which appeals to your mind with more convincing force. In other words, you are not to decide an issue by the simple process of counting the number of witnesses who have testified on the opposing sides. The final test is not in the relative number of witnesses, but in the relative convincing force of the evidence which may be offered in support of or against any particular proposition. (Standard Instruction #6)

In this regard, you are instructed that the testimony of one witness whom you find is entitled to full faith and credit is sufficient for the proof of any fact and can justify a verdict in accordance with such testimony, even if a number of witnesses have testified to the contrary, if upon the whole case, and considering the credibility of the witnesses, as I will explain that phrase to you, and after weighing the various factors of evidence, you should decide that there was a balance of probability pointing to the accuracy and honesty of that one witness. (Sebal v. Bass, supra; Standard Instruction #9, as modified.)

As I mentioned earlier, you are the sole judges of the credibility of the witnesses. This means that you must determine which witnesses you are going to believe and to what extent you are going to believe them. In determining how much credibility, how much weight, you are going to give to the testimony of the witnesses, you should consider the demeanor of the witnesses when testifying; that is, his manner while testifying. Whether he impresses you as having an accurate recollection and memory of the facts about which he is testifying, whether he impresses you as a truth-telling individual, whether he manifests any bias or prejudice or favor towards one side or the other in the case, and whether he has any interest in the outcome of the case. In determining the weight to be given the testimony of any witness, you have the right to draw upon the experience of your own lives, the common sense you have gained in the conduct of your own affairs and all other factors that may appear important to you

in determining whether a person is telling the truth or telling a falsehood. (Sebal v. Bass, supra.) If you believe that any witness wilfully has testified falsely as to any material matter concerning which that witness could not have been reasonably mistaken, then you are at liberty, if you deem it desirable to do so, to disregard the entire testimony or any part of the testimony of that witness. (Standard Instruction #10)

As I mentioned to you in my preliminary remarks, the statements and arguments of counsel are not evidence in the case. It is your recollection alone of what the various witnesses testified to and what the various documents and exhibits admitted into evidence contain that must guide and govern you in reaching your verdict. During the course of the trial, you have heard the attorneys representing the various parties making objections, and on occasion giving the reasons for their objections. The Court made rulings on these objections. You should not be concerned with such rulings or the reasons for them. Whether offered evidence is admissible for your consideration or not is purely a question of law; no inference should be drawn from these various rulings of the Court. You are not to consider the number or type of objections as evidence against any party. Further, when admitting evidence to which an objection has been made, the Court, as you have so often been told, is not ruling on the weight to be given to that evidence. The question of weight is solely for the jury to determine. When the Court has sustained an objection to a question, that withdraws from your consideration that question. You should not, under any circumstances, speculate as to what the answer might have been. (Standard Instruction 15, as modified; Defendants' Instruction 6-2, as modified.)

Also, as I told you at the beginning of the trial, you should not draw any favorable or unfavorable inferences for or against any party, from the bench conferences which the Court has had from time to time with the various counsel, or from the fact that occasionally during the

course of the trial, the Court has required that you retire to the jury room. You, again, should not speculate as to what was said during those conferences. Remember also, that the questions which were propounded to the witnesses by the various attorneys are not to be considered as evidence; only the answers given by the witnesses are the evidence.

The plaintiff in this case, by filing its complaint against the defendants, has assumed the burden of proving its allegations by a fair preponderance of the evidence, which, however, is not necessarily determined by the greater number of witnesses testifying to a particular set of facts. This phrase "preponderance of the evidence" means such evidence as when weighed with that opposed to it, has the more convincing force. (Standard Instructions 21 and 23, as modified.)

Actually, this phrase is a legal one which is really easier to illustrate than it is to define. To explain to you the meaning, the significance of this phrase "fair preponderance of the evidence," I ask you to visualize when you go into the jury room, that you have on the table there a scale on which two trays are hanging evenly in balance. Now label the right hand tray the plaintiff's tray. Then put into that tray all of the evidence in the case which you feel favors the plaintiff's case, giving to that evidence the weight that you believe it is entitled to receive. Then place on the defendant's tray all of the evidence in the case that favors a defendant's side of the case, again giving to the evidence the weight that you believe it is entitled to receive. If the plaintiff's tray goes down, in other words if the plaintiff's evidence outweighs that defendant's evidence, then the plaintiff has sustained the burden of proof by a preponderance of the evidence and your verdict should be for the plaintiff against that defendant. But if that defendant's tray goes down; that is, if that defendant's outweighs the plaintiff's, then your verdict should be for that defendant. Now, if the trays remain in equal balance upon all of the issues in the case upon which the plaintiff has the burden of proof, then your verdict must be for that

defendant, because if the evidence weighs the same for both sides, the plaintiff has not sustained the burden of proof by a preponderance of the evidence. (Defendants' Instruction 1-12, as modified.)

In this regard, plaintiff's claim must be judged separately as to each defendant, and the position of each defendant must be judged on its own merits. Each defendant, therefore, is entitled to individual consideration of the particular evidence applicable to it to determine whether that particular defendant participated in any conspiracy. You cannot return a verdict against any defendant unless you find specifically that the defendant conspired with one or more of the other defendants to unreasonably restrain trade or to monopolize or attempt to monopolize explosives and ammunition traffic. (Defendants' Instruction 1-18, as modified.)

Now, to summarize on this matter of burden of proof, a party has succeeded in carrying the burden of proof on an issue of fact if the evidence favoring his side of the question is more convincing than that tending to support the contrary side, and if it causes you, the jurors, to believe that on that issue the probability of truth favors that party. (Sebal v. Bass, supra.) Now, what is this case all about.

Plaintiff, Riss & Company, Incorporated, is a corporation with its principal offices in Kansas City, Missouri, and is engaged in the transportation of property by motor carrier in interstate commerce; that is, among and between the various states. Plaintiff is a common carrier, which means that plaintiff company is required under the law to make its services available to any shipper complying with the law. The defendants in this civil antitrust suit are four railroad associations: The Association of American Railroads, the Association of Western Railways, the Traffic Executive Association - Eastern Railroads, and the Eastern Railroad Presidents Conference; one public relations firm, namely, Carl Byoir and Associates, Incorporated, with offices in New York City, and twenty-three railroads.

(Plaintiff's Instructions 4 & 5, as modified; Defendants' Instructions A-4 & A-5, as modified.)

Fifteen of the railroad defendants have all or the preponderance of their trackage located in Western Territory. They are:

- (1) The Atchison, Topeka and Santa Fe Railway Company, which has sometimes been referred to as the "Santa Fe."
- (2) Chicago, Burlington & Quincy Railroad Company, which has sometimes been referred to as the "Burlington."
- (3) Chicago and Northwestern Railway Company, which has sometimes been referred to as the "Northwestern."
- (4) Chicago, Milwaukee, St. Paul & Pacific Railroad Company, which has sometimes been referred to as the "Milwaukee."
- (5) Chicago, Rock Island & Pacific Railroad Company, which has sometimes been referred to as the "Rock Island."
- (6) Great Northern Railway Company, which has sometimes been referred to as the "Great Northern."
- (7) Illinois Central Railroad Company, which has sometimes been referred to as the "Illinois Central."
- (8) Missouri-Kansas-Texas Railroad Company, which has sometimes been referred to as the "Katy."
- (9) Minneapolis, St. Paul & Sault Ste. Marie Railroad Company, which has sometimes been referred to as the "Soo."
- (10) Missouri Pacific Railroad Company, which has sometimes been referred to as the "Missouri Pacific."
- (11) Northern Pacific Railway Company, which has sometimes been referred to as the "Northern Pacific."
- (12) St. Louis-San Francisco Railway Company, which has sometimes been referred to as the "Frisco."
- (13) Southern Pacific Company, which has sometimes been referred to as the "Southern Pacific."

(14) Union Pacific Railroad Company, which has sometimes been referred to as the "Union Pacific."

(15) Wabash Railroad Company, which has sometimes been referred to as the "Wabash."

(Defendants' Instruction A-6)

Five of the railroad defendants have all or the preponderance of their trackage located in Eastern territory. They are:

(1) Baltimore & Ohio Railroad Company, sometimes referred to as the "B. & O."

(2) The Chesapeake & Ohio Railway Company, sometimes referred to as the "C. & O."

(3) Erie Railroad Company, sometimes referred to as the "Erie."

(4) The New York Central Railroad Company, sometimes referred to as the "New York Central."

(5) The Pennsylvania Railroad Company, sometimes referred to as the "Pennsylvania."

(Defendants' Instruction A-7)

Three of the railroad defendants have all or the preponderance of their trackage located in Southern Territory. They are:

(1) Atlantic Coast Line Railroad Company, sometimes referred to as the "Coast Line."

(2) Seaboard Air Line Railroad Company, sometimes referred to as the "Seaboard."

(3) Southern Railway Company, sometimes referred to as the "Southern."

(Defendants' Instruction A-8)

The defendant Association of American Railroads, which has sometimes been referred to as "AAR", is an unincorporated association which in 1954 numbered among its members some 131 railroads, among whom were all of the railroad defendants in this case. [Plaintiff's Exh. 188; Tr. Vol. 33, pp. 5424-5449.] It is a lawful organization and mere membership by a railroad defendant in AAR is not in and of itself evidence of

participation in the alleged conspiracy. [Answers to Western Railroads' Interrogatories D. 14(f), (g).] (Defendants' Instruction A-9, as modified)

The defendant Association of Western Railways, which has sometimes been referred to as the "AWR", is an unincorporated association which in 1955 numbered among its members some 64 Western Railroads. The only defendants which are members of AWR are the 15 Western railroad defendants, and none of the 5 Eastern railroad defendants nor the 3 Southern railroad defendants are members. It is a lawful organization and mere membership by a railroad defendant in AWR is not in and of itself evidence of participation in the alleged conspiracy. [Answers to Western Railroads' Interrogatories D. 14(f), (g).] (Defendants' Instruction A-10, as modified.)

The defendant Eastern Railroad President Conference, which has sometimes been referred to as "ERPC", is an unincorporated Association which in 1954 was composed of the presidents of some 37 Eastern railroads, five of which are defendants in this action. Those five are the five Eastern railroad defendants, and none of the 15 Western railroad defendants or the 3 Southern railroad defendants, or their presidents, are members of ERPC. It is a lawful organization and mere membership by the president of a railroad defendant in ERPC is not in and of itself evidence of participation in the alleged conspiracy. [Answers to Western Railroad Interrogatories D. 14(f), (g).] (Defendants' Instruction A-11, as modified.)

The defendant Traffic Executive Association--Eastern Railroads, which has sometimes been referred to as "TEA" or TEA-ER", is a railroad rate bureau which in 1954 numbered among its members some 29 railroads that operate either wholly or partially in Eastern Territory. The five Eastern railroad defendants are members of TEA. TEA operates pursuant to an agreement, introduced in evidence as TEA Exhibit 5053, which was approved by the Interstate Commerce Commission. That agreement defines the functions and procedures of the Association, governs the relationship of the member railroads with the Association, and describes the duties and

authority of the Chairman and other officers of the Association. In essence, TEA provides a means whereby railroads operating within Eastern Territory can engage in joint rate-making activities required or authorized by the Interstate Commerce Act. [Plaintiff's Exh. 191B; TEA Exh. 5053; Tr. Vol. 67, pp. 11281-11294; Vol. 75, pp. 12439-12440.] TEA is a lawful organization and mere membership by a railroad defendant in TEA is not in and of itself evidence of participation in the alleged conspiracy. [Answers to Western Railroad Interrogatories D. 14(f), (g).] (Defendants' Instruction A-12, as modified.)

Defendant Carl Byoir and Associates, which has sometimes been referred to as Byoir, is a corporation engaged in public relations activities on behalf of many clients. It entered into a contract with defendant Eastern Railroads Presidents Conference on August 15, 1949, to perform certain services for ERPC. This contract is plaintiff's exhibit 49. (Defendants' Instruction A-13, as modified.)

You will notice that the plaintiff is a corporation and defendants are all either corporations or associations. You should remember that for purposes of this case, a corporation is a person. Since it is not a person in the physical sense of the word, but only in the eyes of the law, it can only act through human beings; that is, through its officers, agents, employees or servants, and the acts or declarations of those persons when done within the scope of their employment are deemed to be the acts or declarations of the corporations. Also, of course, associations can act only through their employees and officers. It is important for you to bear in mind that not everything that is done in the name of a corporation or association, or by an officer or employee thereof, can properly be taken as an act of the corporation or association. Before you can find against any corporation or association on the basis of the acts or statements of its employees or officers, you must be satisfied that plaintiff has proved, with respect to each act upon which it relies, that the corporation or association authorized or

participation in the alleged conspiracy. [Answers to Western Railroads' Interrogatories D. 14(f), (g).] (Defendants' Instruction A-9, as modified)

The defendant Association of Western Railways, which has sometimes been referred to as the "AWR", is an unincorporated association which in 1955 numbered among its members some 64 Western Railroads. The only defendants which are members of AWR are the 15 Western railroad defendants, and none of the 5 Eastern railroad defendants nor the 3 Southern railroad defendants are members. It is a lawful organization and mere membership by a railroad defendant in AWR is not in and of itself evidence of participation in the alleged conspiracy. [Answers to Western Railroads' Interrogatories D. 14(f), (g).] (Defendants' Instruction A-10, as modified.)

The defendant Eastern Railroad President Conference, which has sometimes been referred to as "ERPC", is an unincorporated Association which in 1954 was composed of the presidents of some 37 Eastern railroads, five of which are defendants in this action. Those five are the five Eastern railroad defendants, and none of the 15 Western railroad defendants or the 3 Southern railroad defendants, or their presidents, are members of ERPC. It is a lawful organization and mere membership by the president of a railroad defendant in ERPC is not in and of itself evidence of participation in the alleged conspiracy. [Answers to Western Railroad Interrogatories D. 14(f), (g).] (Defendants' Instruction A-11, as modified.)

The defendant Traffic Executive Association--Eastern Railroads, which has sometimes been referred to as "TEA" or TEA-ER", is a railroad rate bureau which in 1954 numbered among its members some 29 railroads that operate either wholly or partially in Eastern Territory. The five Eastern railroad defendants are members of TEA. TEA operates pursuant to an agreement, introduced in evidence as TEA Exhibit 5053, which was approved by the Interstate Commerce Commission. That agreement defines the functions and procedures of the Association, governs the relationship of the member railroads with the Association, and describes the duties and

authority of the Chairman and other officers of the Association. In essence, TEA provides a means whereby railroads operating within Eastern Territory can engage in joint rate-making activities required or authorized by the Interstate Commerce Act. [Plaintiff's Exh. 191B; TEA Exh. 5053; Tr. Vol. 67, pp. 11281-11294; Vol. 75, pp. 12439-12440.] TEA is a lawful organization and mere membership by a railroad defendant in TEA is not in and of itself evidence of participation in the alleged conspiracy. [Answers to Western Railroad Interrogatories D. 14(f), (g).] (Defendants' Instruction A-12, as modified.)

Defendant Carl Byoir and Associates, which has sometimes been referred to as Byoir, is a corporation engaged in public relations activities on behalf of many clients. It entered into a contract with defendant Eastern Railroads Presidents Conference on August 15, 1949, to perform certain services for ERPC. This contract is plaintiff's exhibit 49. (Defendants' Instruction A-13, as modified.)

You will notice that the plaintiff is a corporation and defendants are all either corporations or associations. You should remember that for purposes of this case, a corporation is a person. Since it is not a person in the physical sense of the word, but only in the eyes of the law, it can only act through human beings; that is, through its officers, agents, employees or servants, and the acts or declarations of those persons when done within the scope of their employment are deemed to be the acts or declarations of the corporations. Also, of course, associations can act only through their employees and officers. It is important for you to bear in mind that not everything that is done in the name of a corporation or association, or by an officer or employee thereof, can properly be taken as an act of the corporation or association. Before you can find against any corporation or association on the basis of the acts or statements of its employees or officers, you must be satisfied that plaintiff has proved, with respect to each act upon which it relies, that the corporation or association authorized or

ratified what the agent did or said. This authorization or ratification, however, does not have to be express, but may be implied or inferred from things done or said or not said, and from the circumstances. (Defendants' Instruction 7-4, 7-4A and 7-4D, as modified.)

Some of the defendants in this case are associations--associations or railroads or of their officers or employees. Such associations are perfectly lawful. Moreover, there is absolutely nothing unlawful in and of itself in any of the railroad defendants being members of one or many associations, or participating in their committees, their meetings or their other activities. [Sugar Institute v. United States, 297 U.S. 553 (1936); Maple Flooring Ass'n v. United States, 268 U.S. 563 (1925)] (Defendants' Instruction 1-23, as modified.)

The individual members of the association can be held responsible for the unlawful conspiratorial acts or declarations of the associations only if they are shown to have known and approved of such activities and their unlawful objective, either expressly or impliedly. (Defendants' Instruction 1-24, as modified.)

Evidence of participation by some members of an association in an illegal conspiracy is not sufficient to establish participation by the association in the conspiracy. The association is not liable for the acts of its members unless the association, as such, has directed or authorized the acts complained of or ratified them, either expressly or impliedly. [Coronado Coal Company v. United Mine Workers, 268 U.S. 295 (1925); United Mine Workers v. Coronado Coal Company, 259 U.S. 344 (1922); Feldman v. North British & Mercantile Ins. Co., 137 F.2d 266, 268 (4th Cir. 1943); United States v. Food & Grocery Bureau, 43 F. Supp. 966 (S. D. Cal. 1942).] (Defendants' Instruction 1-25, as modified.)

In regard to this situation of all parties being either corporations or associations, I wish to submit to you a caution which perhaps is not necessary, but in view of the very large sums of money which have been

mentioned in the case, may bear mentioning. You will remember that on the examination of your voir dire, when you were being selected as jurors, that you were asked whether the fact that many large corporation were involved in this case would influence your verdict, and you all answered that it would not. You were also asked whether the presence of many defendants and only a single plaintiff would influence your verdict, and again you answered that it would not. Except for a limited purpose, which I will explain later, you should have no concern with the fact that large assets, property holdings and earning power have been mentioned in this case, and you should entertain no bias or prejudice against any party on that account. This Court and this jury must render equal justice to all. Remember that everyone is equal in the eyes of the law. [American Tobacco Co. v. U.S., 328 U.S. 781, tr.] This is a legal proceeding and you must not permit either sympathy or prejudice to affect your verdict in any way.

You are instructed that no inference unfavorable to defendants is to be drawn from the mere fact that this suit has been brought by one plaintiff against several defendants. (Defendants' Instruction 7-2, as modified.) Further, you are instructed that no significance should be attached to cooperation of counsel for defendants during the course of the trial. That practice is quite normal in cases involving multiple parties on both sides. (American Tobacco Co. v. U.S., 328 U.S. 781, tr. p. 6366)

Now, before I review some of the evidence in this case, I will state to you in an abstract way, the law applicable to this case. However, when I said that I would review the evidence, I did not mean that I was going to attempt to go into detail and specifically review all the evidence. You have already heard the arguments by counsel for both sides, each explaining his theory in regard to the evidence. To review it in detail at this time would be a repetition which would serve no useful purpose. Therefore, my later review of the evidence will be a general reference only to it, in the hope that it will be of some assistance to you in clarifying and perhaps simplifying

the issues and clarifying the application of the law. (American Tobacco Co. v. U.S., 328 U.S. 781, tr. pp. 6351 & 6352)

Plaintiff's action is brought under Section Four of the Clayton Act which was passed by Congress in 1914. This section of the Act allows a private person, or a corporation such as the plaintiff, alleging injury as a result of another's violation of the antitrust laws, to bring a private suit for damages. (Plaintiff's Instruction 3, as modified.) As I indicated to you in my preliminary remarks, the person or corporation seeking damages must establish that he, or it, has suffered money damage as a result of the other's wrongdoing.

Plaintiff's complaint alleges that defendants violated Sections One and Two of the Sherman Antitrust Act. Section One of that Act reads as follows:

"Every contract, combination in the form of trust or otherwise; or conspiracy in restraint of trade or commerce among the several states or with foreign nations is declared to be illegal."

Section Two of the Act provides that it is unlawful for "[any] person [to] monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several states or with foreign nations." As I have mentioned earlier, the words person and persons as used in the Act include corporations and associations organized and existing under authority of law. Plaintiff alleges that the same means were used to violate both sections of the Act; that is, that the same methods were used in the alleged conspiracy in restraint of trade under Section One, as were used in the alleged conspiracy to monopolize and attempt to monopolize under Section Two.

A few general comments on the antitrust law, along the lines that I mentioned in my preliminary remarks, may aid you in your deliberations in this case. The Sherman Act was made law by our Congress in the year 1890

and, as you have probably noticed, is couched in very broad and general language. This general language has been construed by the Supreme Court as prohibiting only unreasonable restraints and not all possible restraints of trade. Now what were the purposes of Congress in passing this Act, which has been called a "charter of freedom"? (Appalachian Coals v. U.S., 77 L. Ed. 825)

It was the feeling of the Congress that the public interest is best served when commerce and trade are left unfettered by combinations and agreements which have the effect of destroying competition in whole or in part. (C & O Fuel Co. v. U.S., 115 Fed. 616) Therefore, the broad purpose of the Act is to maintain free competition in interstate commerce. (American Column & Lumber Co. v. U.S., 66 L. Ed. 284) Thus the Act broadly condemns all combinations and conspiracies which restrain the free and natural flow of trade in the channels of interstate commerce. (Eastern States Retail Lumber Dealers Assn. v. U.S., 234 U.S. 600, 609) Any concerted action, therefore, by any combination of men or corporations or associations to cause, or which in fact does cause, direct and undue restraint in such commerce, falls within the prohibition of the Act and is unlawful.

As I told you on a prior occasion, the term monopolize as used in the Sherman Act, means the joint acquisition or maintenance by the members of a conspiracy, formed for that purpose, of the power to control and dominate trade and commerce in a commodity (or commodities), to such an extent that they are able, as a group, to exclude actual or potential competitors from the field accompanied by the intention and the purpose to exercise such power. (American Tobacco Co. v. U.S., 328 U.S. 781, tr. 6348; Defendants' Instruction 1-5, as modified.) Since the transportation of Government ammunition and explosives has not been monopolized, plaintiff must prove that some or all of the defendants attempted to monopolize that business pursuant to a conspiracy to monopolize the business. The phrase "attempt to monopolize," means the employment of methods, means and practices, which, if

successful, accomplish monopolization and which, though falling short, nevertheless approach so close as to create a dangerous probability of it, which means and methods are so employed by the members of, and pursuant to, a combination or conspiracy formed for the purpose of such accomplishment. (American Tobacco Co. v. U.S., 328 U.S. 781, tr. 6348, 6349; Defendants' Instruction 1-4, as modified.)

This offense of an attempt to monopolize required proof that the parties to the alleged conspiracy had an actual, specific intent to obtain for themselves a monopoly of the relevant market by means of the overt acts engaged in by them pursuant to the alleged conspiracy. (United States v. Griffith, 334 U.S. 100, 105; Swift & Co. v. United States, 196 U.S. 375, 396.) Defendants' Instruction 1-6A as modified.)

As you can see, in the context of this case, Section Two of the Act specifies two offenses; that is, attempts to monopolize and combinations and conspiracies to monopolize, and they are entirely distinct from monopolization. In neither of these is a showing required that the desired end of monopoly power was actually achieved. (United States v. Columbia Steel, 334 U.S. 495, 531-32 (1948). In all cases of attempts to monopolize, as I have mentioned, and in the conspiracy cases such as this one, where monopoly power has not been achieved, these offenses require proof of a specific or subjective intent to accomplish an unlawful result. However, where a conspiracy or combination is involved, proof of this intent merges with proof of the combination or conspiracy deliberately entered with a specific purpose. (Attorney General's Report, p. 61) Now in regard to Section One of the Act which forbids restraints of trade, the gist of the offense is the joint action of the alleged conspirators. This section of the Act does not forbid all restraints of trade, but only combinations and conspiracies which unreasonably restrain trade. You see, all business action affects trade in some way. The law tries to keep the competitive process natural and reasonable. It is when practices subvert the natural interplay

of competition that the law forbids them. Let me give you an example. When a person goes out of business because he is incompetent; that is, he just isn't a good businessman, competition is lessened naturally and obviously, since, of course, there is one less business in the field of competition. But no one is held responsible for that man's business failure. It was the result of the competitive process. But when you combine and conspire to drive a competitor out of business, that is another thing--the result is the same in both cases; i. e., there is one less business in the field, but in the latter case the restraint of trade, especially when part of a larger scheme to monopolize, violates the Sherman Act. [Noerr Motor Freight v. Eastern Railroads Presidents Conference, slip opinion p. 3; Crummer v. DuPont, 223 F2d 236; 255 F2d 425 (5th Cir.) cert. denied 358 U.S. 884 (1958); Klors v. Broadway-Hale Stores, 3 L. Ed. 2d 741 (1959)]

The phrase "restraint of trade" includes restraint of competition as it is used in the Sherman Act. (United States v. Nat'l Retail Lumber Dealers Ass'n., 40 F. Supp. 448) The Sherman Act doesn't guarantee anyone a particular part of a market but does no more than guarantee a right to compete equally for so much of the market that he can capture and hold by legitimate business methods, (Eagle Lion Studios v. Leowes Inc., 141 F. Supp. 658, aff'd 248 F2d 438, aff'd 3 L. ed. 147), but combinations which foreclose competitors from a substantial market or a substantial part of a market, restrain trade within the meaning of the Sherman Act. (United States v. Times Picayune Pub. Co., 105 F. Supp. 670, rev'd on other grounds, 97 L. ed. 1277)

So, therefore, you see that there are three offenses charged by the plaintiff: One, that the railroads tried to eliminate Riss in unreasonable restraint of trade, as one of their principal competitors and as part of their plan to monopolize the ammunition business for the government; two, that the defendants conspired to monopolize this trade for themselves, and

three, that they then attempted to monopolize this business. I, of course, intimate no opinion on whether or not these allegations are in fact correct. That is for you alone, the jury to decide.

Thus, you see that an essential element of the violations charged by the plaintiff in his complaint, is a combination or conspiracy by the defendants. These terms, combination and conspiracy, as used in the Sherman Act have the same legal effect. I shall use them in these instructions interchangeably without intending any distinction in their meaning. (American Tobacco Co. v. U.S., 328 U.S. 781, tr. p. 6349)

As I told you in my remarks at the start of the trial, a conspiracy is an agreement between two or more persons to accomplish a lawful objective by unlawful means, or to accomplish an unlawful objective by lawful means. No formal agreement is necessary to constitute a conspiracy. (Duplex Printing Co. v. Deering, 65 L.ed. 349)

"It is not the form of the combination or the particular means used but the result to be achieved that the statute condemns. It is not of importance whether the means used to accomplish the unlawful objective are in themselves lawful or unlawful. Acts done to give effect to the conspiracy may be in themselves wholly innocent acts. Yet, if they are part of the sum of the acts which are relied upon to effectuate the conspiracy which the statute forbids they come within its prohibition. No formal agreement is necessary to constitute an unlawful conspiracy. The essential combination or conspiracy may be found in a course of dealings or other circumstances as well as in an exchange of words." (American Tobacco Co. v. U.S., 90 L.ed. 1575, tr.

Now, a conspiracy may be proved by circumstantial evidence; that is, it is not necessary that there be direct evidence of the conspiracy, but it

may be inferred from the things actually done and from the circumstances.
(American Tobacco Co. v. U.S., 328 U.S. 781)

There are two kinds of evidence in the law. One we call "direct" and the other we call "indirect" or "circumstantial." Direct evidence is evidence presented by some one who has personal knowledge of a fact in issue in the case--the testimony of the witness himself as to what he saw or heard. Circumstantial evidence is evidence presented by someone who does not have actual knowledge of a fact in issue but who does have personal knowledge of certain other facts which tend to prove or disprove the fact in issue. Direct evidence is evidence, which, if believed, proves the existence of a fact in issue without any inference or presumption. While circumstantial evidence does not directly prove the existence of a fact in issue, but gives rise to a reasonable inference that such fact exists. To illustrate the difference between direct and circumstantial evidence, let us assume that the fact in issue in a case is whether or not John shot and killed Mary. If a witness testified that he personally saw John shoot Mary, we would say that we had direct evidence. On the other hand, if a witness testified that an hour before Mary was shot, he sold John the pistol which has been identified as the murder weapon, and it was found in the possession of John shortly after the murder, we would say that we had circumstantial evidence of the fact that John did shoot and kill Mary. This rule of admitting circumstantial evidence is one of necessity and justice. Justice would seldom be done if direct or eye-witness testimony were required exclusively. At times, in fact, if the circumstantial evidence is sufficiently strong, it may be even more convincing than direct evidence, for example, an eye-witness may make a mistake in identifying the person whom he saw, or a witness's memory may be inaccurate. On the other hand, circumstances speak for themselves, and if they are strong enough and unambiguous enough at times irresistably lead to a definite conclusion. One writer has stated the matter in this fashion: "The picture of a conspiracy as a meeting by twilight of a

trio of sinister persons with parted hats (huddling) close together belongs to a darker age." (1950 U. Ill. Law Forum 659.) What this writer means is quite obvious. Persons entering into such illegal relationships usually, and perhaps naturally, seek to conceal their plans and their purposes, hence the law recognizes that the acts of the parties, their courses of conduct and all surrounding conditions and circumstances are competent as evidence upon the question and may be considered upon the question whether or not such an illegal conspiracy or combination was made or entered into and in determining the parties to it. (American Tobacco Co. v. U.S., 328 U.S. 781, tr. pp. 6350, 6351) To constitute an illegal conspiracy, it is not necessary that the parties thereto meet together at the same time, or at the same place, or even that they meet at all, nor is it necessary that all parties be present or participate in every act committed for the accomplishment or furtherance of the objects of the conspiracy. Nothing more is essential than that some character or manner of communication take place between them sufficient to enable them to reach a definite, mutual understanding of the common, unlawful objective or purpose to be thereafter accomplished and that they will unite or combine their efforts to that end. (American Tobacco Co. v. U.S., 328 U.S. 781, tr. pp. 6349-50.)

Further an unlawful conspiracy may be formed without simultaneous action or agreement on the part of the conspirators. (Interstate Circuit Inc. v. U.S. 83 L.ed. 610) It is enough that knowing that concerted action was contemplated, the conspirators have their adherence to the scheme and participated in it. (Ibid.)

Before a conspiracy can be said to have been proved by circumstantial evidence alone, it is necessary not only that the circumstances proved by the evidence shall reasonably give rise to an inference of such conspiracy, but also that no other equally reasonable inference can be drawn from the same circumstances. If two equally reasonable inferences can be drawn from circumstances proved by the evidence, one consistent with the

existence of the conspiracy sought to be proved and the other inconsistent therewith, you should not infer the existence of the conspiracy from such circumstances alone. [Portion of charge approved in Bigelow v. RKO Radio Pictures, Inc. (Tr. 2878 (N. D. Ill., 1944); Pevley Dairy Co. v. United States, 178 F. 2d 363, 367 (8th Cir., 1949)] (Defendants' Instructions 1-16)

Plaintiff's claim must be judged separately as to each defendant, and the position of each defendant must be judged on its own merits. Each defendant, therefore, is entitled to individual consideration of the particular evidence applicable to it to determine whether that particular defendant participated in any conspiracy. You cannot return a verdict against any defendant unless you find specifically that that defendant conspired with one or more of the other defendants to unreasonably restrain trade or to monopolize explosives and ammunition traffic, or attempted to monopolize such traffic. (Defendants' Instruction 1-18, as modified.)

If you should determine that there was a conspiracy to unreasonably restrain trade or to monopolize the business of hauling explosives and ammunition for the Government, or an attempt to monopolize, then in order for you to find that any individual defendant participated in that conspiracy, it must be shown that said defendant had "knowledge of the existence of that conspiracy" and that it "knowingly performed an act designed to promote or aid in the attainment of the object of that known conspiracy." [United States v. National City Lines, 186 F. 2d 562, 571 (7th Cir. 1951).] (Defendants' Instruction 1-19).

In order to find that a defendant had knowledge of the conspiracy, if any, the evidence of knowledge must be clear and not equivocal. [Direct Sales Co. v. United States, 319 U.S. 703-711] (Defendants' Instruction 1-19B)

I instruct you that you may not find that any individual defendant participated in the alleged conspiracy by performing an act in furtherance

of and with knowledge of the conspiracy unless you find that it has such knowledge and took such action prior to September 22, 1954. (Defendants' Instruction 1-19E.) (See Plaintiff's Instruction No. 8)

If you should determine that there was such a conspiracy, recovery against any individual defendant can be had only for conduct which "the conspiracy contemplated and embraced". . . . A defendant is chargeable with the acts of its fellow defendants only if the acts are done in the furtherance of the joint venture as all understood it; an individual defendant cannot be held for what some of the defendants, unknown to the rest, do beyond the reasonable intendment of the common understanding. (Momand v. Universal Film Exchange, 72 F.Supp. 469, 475 (D. C. Mass. 1947), aff'd 172 F.2d 37 (C. A. 1, 1948), cert. denied 336 U.S. 967 (1949); Cf. United States v. Socony-Vacuum Oil Co., 310 U.S. 150 (1940).] (Defendants' Instruction 1-20)

If you should determine that there was a conspiracy, you cannot find a defendant liable for the acts of his co-defendants which were not contemplated by their common understanding. If a defendant's co-defendant enters into unlawful undertakings with third parties, said defendant is not liable for acts performed by such co-defendant in furtherance of that latter conspiracy. [United States v. Andolschek, 142 F.2d 503 (C. C. A. 2, 1944).] (Defendants' Instruction 1-21)

"Nobody is liable in conspiracy except for the fair import of the concerted purpose or agreement as he understands it; if later comers change that, he is not liable for the change; his liability is limited to the common purposes while he remains in it." [United States v. Peoni, 100 F.2d 401 (C. C. A. 2, 1938).] (Defendants' Instruction 1-22)

Further, a defendant does not become a party to a conspiracy merely by rendering services to it. As I have mentioned before, you cannot return a verdict against a particular defendant unless you find that that defendant knew of the conspiracy and participated in it. However, this knowledge may be inferred from all the evidence and need not be proven

by direct evidence. This knowledge issue is, of course, for you the jury to decide. (Byoir No. 4, as modified.)

Also, a conspiracy cannot be inferred merely from the fact that several persons engage in similar business conduct with the same end in view. Such similar or parallel business behavior standing alone does not constitute a Sherman Act offense. It is, of course, one type of relevant evidence on that point. But proof of agreement, express or implied is still indispensable to the establishment of a conspiracy under the antitrust laws. (AWR Instruction 16-B, as modified; Theatre Enterprises v. Paramount, 346 U.S. 537, 541; Attorney General's Report, p. 39.)

You must keep in mind that the character and effect of a conspiracy cannot be judged by reviewing its separate parts, but only by looking at it as a whole.

Now what is this case all about? What is the basic issue here? The plaintiff has charged that the defendant combined to monopolize the business of transporting ammunition and explosives for the United States Government. Plaintiff claims that its business was a special target of the defendants alleged campaign because plaintiff was an important trucker of ammunition and explosives for the United States Government and alleges that the defendants would have to eliminate the plaintiff's competition for that traffic in order to monopolize that traffic. Each defendant denies these allegations of the plaintiff. (Plaintiff's Instructions 3 and 7, as modified.)

Plaintiff claims that the defendants used means, which, if considered by themselves, were entirely lawful. . That is, the plaintiff is charging that type of conspiracy which I told you consisted of an agreement by two or more persons to accomplish an unlawful objective by lawful means. It is plaintiff's claim that this unlawful objective was the obtaining for the railroads as a whole, at least 90% of the government ammunition traffic, without regard to the merits of any particular railroad or group of railroads, as competitors for such traffic.

Plaintiff claims that this unlawful conspiracy had its beginnings around the year 1950 and that the railroad association defendants and defendant Carl Byoir and Associates, Incorporated, the public relations firm, were the agents of the individual railroad defendants in carrying out the alleged unlawful design. (Plaintiff's Instruction 4, as modified.) This, of course, is for you the jury to decide. In order for you to consider the allegations made and the evidence presented on them, it would be well to review what the record shows concerning the background of this controversy.

You will recall hearing testimony, which neither side has any disagreement with, that during the period embracing the Second World War, the railroads of the nation had approximately 90% or more of the business of hauling explosives for the United States Government. It is the plaintiff's claim, controverted by the defendants, that after the war, when the trucking industry began to grow at a rapid rate, that the railroads became concerned over the inroads being made on their traffic and decided to take steps to prevent it, the plaintiff claiming that their stated purpose being to obtain a monopoly of the business. This again is, of course, for you the jury to decide. But any evidence relating to the competitive situation at this time, is permitted and competent under the law merely for the purpose of throwing light, if it does throw any light, in your opinion, upon subsequent events. This is true also regarding the evidence relating to the so-called reparations case, which concerned rates which were charged by the railroads during the Second World War. This historical evidence is admitted for your consideration--you are the judges as to whether these matters throw any light upon the acts alleged here and aid you in any way in interpreting them and understanding them. (American Tobacco Co. v. U.S., 328 U.S. 781, tr. p. 6353, as modified.)

In its original complaint, filed in September, 1954, the plaintiff alleged the use of several means by defendants pursuant to what has been termed throughout this trial, the "pre-existing conspiracy." Plaintiff

claimed, as you will recall, that defendant Eastern Railroads Presidents Conference hired a public relations firm to conduct an allegedly false and malicious campaign of publicity against long distance truck carriers of ammunition and explosives; the alleged purpose of such campaign being, as I have previously indicated, the obtaining for the railroads of at least 90% of the business. It is plaintiff's further contention that the defendants tried unsuccessfully to get certain state legislatures to pass laws which would prevent all truckers from competing for the government ammunition and explosives business. You will recall, in this regard, the testimony pro and con concerning the so-called "5000 pound bills." Plaintiff claims that defendants abused the privilege of intervention before the Interstate Commerce Commission and that both the attempts at legislation and the proceedings before the Interstate Commerce Commission were used as a basis for a defamatory public relations campaign which was intended to injure the plaintiff's good will, and ultimately to eliminate the plaintiff from transporting any commodities, not just explosives, in competition with the railroad defendants. Plaintiff claims that its business was a special target of this alleged campaign of the defendants because plaintiff was an important trucker of ammunition and explosives for the United States Government, and that defendants would have to eliminate the plaintiff's competition for that traffic in order to monopolize it. (Plaintiff's Instruction 7, as modified.)

Now, in response to these charges of the plaintiff, defendants claim, in regard to their alleged preparation, circulation and publication of statements concerning the plaintiff and other truckers, that these statements were in fact true and fair comments on matters of public interest. And, in this regard, I might tell you that the hauling of explosives by truck or rail is a matter of public interest. (Defendants' Instruction 3-6B, as modified.) Defendants claim that for many years plaintiff failed to render adequate service as a common carrier, and that the plaintiff has on many

occasions violated federal and state laws and regulations relating to motor carriers, and has conducted its operations with inadequate, unsafe and improper equipment, has disregarded the safety and welfare of other users of the public highways and the safety and welfare of the communities through which its trucks passed, and that as a result of these activities of plaintiff, various state and local officials have adopted laws and regulations affecting the operations of plaintiff. Defendants' further claim that their intervention in certain proceedings before regulatory bodies involving the plaintiff have been the reasonable, ordinary and necessary result of these alleged unlawful activities of the plaintiff. It is the further contention of the defendants that when governmental bodies and other public organizations intervened or participated in proceedings before the Interstate Commerce Commission involving the plaintiff, that such intervention was not the result of any unlawful activities on the part of the defendants, but was instead the result of an independent decision on the part of each such organization that such action was necessary by reason of their respective interests and plaintiff's alleged unlawful and improper activities. Defendants claim that any action taken by courts or administrative agencies against the plaintiff was based on good and reasonable cause and was not the proximate result of any action of the defendants.

Both parties, as you have heard from the arguments of counsel, claim that their evidence shows these views. This is, of course, for you to decide. The issue in this case is not whether transporting ammunition and explosives by truck is more dangerous than transporting the same by rail or whether you believe that transporting ammunition by truck is more dangerous than by rail, or whether the trucks break up the roads or whether you believe that they break up the roads, or whether the trucks pay their fair share of the upkeep of the roads, or whether you believe or do not believe that they pay their fair share of road upkeep. Evidence on these matters has been introduced, only as bearing on the issue of purpose and

intent; that is, were the railroads as they claim acting in the railroads' own interest or in the public interest in publicizing these matters, or was their intent to monopolize the transportation of ammunition and explosives for themselves, or to unreasonably restrain trade and drive the plaintiff out of the explosives business? Public relations activities, as I have told you during the trial, in and of themselves, are not unlawful, but they cannot be used to violate the antitrust laws, and I do not suggest that they were or were not so used. That again is for you, the jury, to decide from all the evidence. It has never been deemed an abridgement of speech or press to make a course of conduct illegal merely because the conduct was in fact initiated, evidenced or carried out by means of language either spoken, written or printed. Such an expansive interpretation of the constitutional guarantees of speech and press would make it practically impossible to enforce laws against agreements in restraint of trade. (Defendants' Instruction 1-9A, as modified.)

Further you are instructed that sponsoring legislation, in and of itself, is not unlawful. Therefore, if you find that the defendants or any of them engaged in an effort to obtain the enactment of any 5,000 pound bills which were introduced in various state legislatures, such an action was not in itself unlawful. However, if done pursuant to a pre-existing conspiracy to drive a competitor out of business, or to monopolize or to attempt to monopolize such activities, in view of the overall plan would violate the antitrust laws. These issues are for you, the jury, alone to decide. (Defendants' Instructions 3-1, 3-2, as modified.)

With regard to that part of the case dealing with proceedings before the Interstate Commerce Commission and other regulatory agencies and bodies, it is necessary for a proper understanding of that aspect of the case, to go into some detail. First of all, I want you to keep firmly in mind that you are to take the decisions of the Interstate Commerce Commission as correct as a matter of fact and law, and you should not consider

whether some other result would have been proper or more desirable in these proceedings. The commission is charged by Congress with the power and authority to regulate transportation, and the decisions of the commission are entitled to complete acceptance by the jury. (Defendants' Instruction 2-1)

You are further instructed that the regulatory scheme established by the Interstate Commerce Act contemplates that interested carriers may intervene in proceedings involving their competitors, and may contend in those proceedings that no new authority should be granted to their competitors. It is uncontroverted that some of the defendants participated in or intervened in proceedings before the Interstate Commerce Commission involving the plaintiff. But this participation or intervention, in and of itself, whether it be joint or single, is lawful under the antitrust laws. Intervention in these proceedings and advocacy of limitations on a competitor's operating authority are proper, legal and desirable in and of themselves, and cannot constitute evidence, by themselves, of an intention to monopolize. In other words, from the act alone of intervention or participation in these proceedings, you cannot infer the existence of a conspiracy to violate the antitrust laws. (Defendants' Instruction 1-7 and 2-6, as modified.) The purpose and intent of these defendants is the key issue in this case, and such purpose cannot be inferred from these acts standing by themselves. You cannot find such purpose from the mere fact of intervention or participation. Your initial determination is whether or not there was this "Pre-existing conspiracy" to violate the antitrust laws.

Sponsoring legislation, in and of itself, is not unlawful. Persuasion of, or attempts to persuade, departments of the government, by itself, is not evidence of an unlawful intent under the Sherman Act. However, if, and I say if, the motivation of attempts to persuade or persuasion of a department of the government emanates from and is a part of a pre-existing conspiracy or scheme to wreck a competitor or to monopolize trade and commerce,

such action is a violation of the Sherman Act. (Defendants' Instruction 1-6D, as modified.)

These same principles also apply to the solicitation of witnesses or testimony of witnesses in ICC proceedings. Such action, standing by itself, is not in any sense a violation of the antitrust laws. (Defendants' Instruction 2-7, as modified.) These Interstate Commerce Commission proceedings involved in this case and concerning which you have heard evidence are as follows: Docket MC (meaning Motor Carrier) Sub. No. 84, is the designation assigned by the Interstate Commerce Commission to an application filed by the plaintiff in 1947 for permanent authority to transport ammunition and explosives. In considering such applications as the plaintiff's the Commission determines whether the authority sought is required by present or future public convenience and necessity and whether the applicant is fit, willing and able to perform the service for which it seeks authority. In such proceedings, as I have previously mentioned, competitors are permitted to participate in the proceedings and, to present evidence to show that the application should not be granted. In Sub-84, these participants included both railroads and motor carriers. The plaintiff's application was initially denied by the Commission, but this denial was vacated by the Supreme Court. The application was reinstated and new hearings were ordered in 1951. At this time, approximately 60 other motor carriers also asked the Commission for permanent authority to transport ammunition and explosives. These cases were consolidated; that is, the plaintiff's application was heard separately, but by agreement between the parties, evidence introduced during the plaintiff's hearing was incorporated by reference into the record made with respect to the other applications. Some of the railroad defendants intervened in these proceedings. In 1955, the ICC decided that no permanent authority would be granted to anyone but did grant temporary authority for a five year period for certain points to four of the applicants, including the plaintiff. The Commission postponed any actual grant of authority to

the plaintiff pending further hearings concerning the plaintiff. In 1959, before any final decision, the plaintiff voluntarily asked the Commission to dismiss its application and the request was granted. (Defendants' Instruction 2-2, as modified.)

In January, 1952, certain Eastern and Western railroads filed a petition with the Interstate Commerce Commission asking the Commission to interpret the scope of the temporary authority to transport ammunition and explosives which had previously been granted to plaintiff under an application denominated MC-200 (Sub. No. 60 TA--meaning Temporary Authority). The ICC held that certain of the service in the transportation of ammunition and explosives which plaintiff was then carrying on was not within the scope of the authority granted in MC-200 (Sub 60 TA) and therefore was not authorized. Plaintiff was directed to cease and desist from such operations and to limit its operations, under Sub 60 TA, to service particularly described by the ICC in its report. The plaintiff appealed this order of the ICC to the United States District Court for Missouri and to the Supreme Court of the United States, where it was affirmed and became effective on December 28, 1953, the effective date of the order having been postponed by successive stays issued respectively by the ICC, the District Court and the United States Supreme Court. (Defendants' Instruction 2-3, as modified.)

(See Insert No. 1, page 30-A)

These were the principal overt acts charged in the original complaint which was filed on September 22, 1954. This phrase "overt acts" means acts done to effect the object of the conspiracy. (Dahly v. U.S., 50 F2d 37, 42) In other words, before the offense of conspiracy is completed, one or more of the parties must do some act to effect the object of the conspiracy. Such act is termed an overt act. An overt act as effecting the object of a conspiracy must be one independent of the conspiracy and agreement. It must not be one of a series of acts constituting the agreement or conspiring together, but it must be a subsequent, independent act following the complete

agreement or conspiracy and done to carry into effect the object of the original combination. (U.S. v. Richards, 149 Fed. 443, 446)

The first issue you have to determine is whether or not there was in existence prior to the filing of the plaintiff's complaint on September 22, 1954, the conspiracy alleged in that complaint as I have summarized it for you. If you determine that there was no such conspiracy, you will return a verdict for the defendants. If you determine that there was such a conspiracy, and I do not suggest that there was or was not, then, for your second step, you may consider whether or not the overt acts which are the subject of the supplemental complaint filed on January 31, 1958 were or were not acts taken pursuant to that conspiracy. (Plaintiff's Instruction 8)

Now the subject matter of this supplemental complaint is, as you will recall, as follows: The plaintiff claims that on or about October 20, 1955, the Eastern railroad defendants caused to be submitted to officials employed by the Department of Defense, a uniform, unpublished rate quotation by and on behalf of those railroads engaged in carrying explosives traffic in competition with the plaintiff. That quotation, as allegedly supplemented by later quotations issued in March and April 1956 by the Western and Southern Railroads, plaintiff charged established railroad rates for carrying explosives shipments totalling more than 50,000 pounds which were allegedly nearly 40% below the general level of rates prevailing for the previous eight years. Plaintiff claims that these alleged uniform and concerted rate reductions were intended to exclude the plaintiff from the business of carrying such shipments of explosives and did have that effect with respect to the principal points served by the plaintiff. Plaintiff claims that the quotations were made for the purpose of effectuating one of the principal objects of the conspiracy, to wit, the elimination of the plaintiff as a competitor of the railroads for explosives traffic and that the rate reductions substantially injured plaintiff's business. (Par. 18, Supplemental Complaint.)

Now, with regard to this charge of the plaintiff that the rate reductions

were overt acts taken pursuant to a pre-existing conspiracy, defendants claim that such rates were adopted in conformity with formal agreements approved by the Interstate Commerce Commission; that these rates were in fact a series of joint rates which were not uniform and that such rate quotations to the Department of Defense were in fact submitted at the express request of the defense department which allegedly asked the railroad defendants for a substantial reduction in the joint rates for the transporting of explosives; that the Defense Department encouraged and, in fact, required joint action by the railroad carriers in quoting rates for the transporting of explosives and, finally, that these rate changes were based on sound business judgments then prevailing in the transportation industry, including the competitive conditions prevailing at the time and that these rate changes were reasonable responses to circumstances in the transportation industry, including factors of competition. These issues, of course, are for you the jury to resolve. (Answers to Supplemental Complaint.)

Now Section 5A of the Interstate Commerce Act authorized railroads to agree on rates to be charged by the railroads and to employ for this purpose rate bureaus such as the Traffic Executives Association, the Southern Freight Association and the Western Traffic Association. You are instructed that all railroad rates here in question were made pursuant to the procedures specified in the various railroad rate agreements which have been approved by the Interstate Commerce Commission. (Defendants' Instruction 4-2, as modified.) You should understand, in considering whether or not these rate reductions were made pursuant to the pre-existing conspiracy, that the plaintiff does not contend that these rate reductions were illegal, in and of themselves. You may assume that these rate reductions like the alleged overt acts which occurred prior to the complaint, are all perfectly legal acts when viewed apart from the alleged conspiracy. As in the case of the other alleged overt acts, the important issue for you to determine is what was the purpose of the rate reductions. (Plaintiff's Instruction 11, as modified.)

If you find that these rate practices were part of an effort by the defendants in combination or conspiracy to eliminate the competition of the plaintiff and other truckers of ammunition and explosives for the United States Government, rather than used merely to meet that competition, they would be removed from the protection of Section 5a of the Interstate Commerce Act. (ACTA)

If you find, as the defendants claim, that the reduction was in fact made only to meet the competition afforded by the plaintiff and other truckers of ammunition and explosives for the United States Government, then you may infer from that fact that the reduction was not made pursuant to the alleged conspiracy. If, on the other hand, you find as the plaintiff alleges, that the purpose of the reduction was not to meet the truckers competition, but was in fact to eliminate that competition and thus obtain a monopoly share of this traffic for the railroads, then you may infer from that fact that the reduction was made for the purpose of effectuating the alleged conspiracy, as the plaintiff claims. (Plaintiff's Instruction 11) Plaintiff has no right to damages from any rate reduction of which the plaintiff complains unless his proof has convinced you by a fair preponderance of the evidence of each of the three following points:

1. Prior to the October 1955 rate reductions, two or more of the defendants must have been engaged in a conspiracy to monopolize government explosives traffic, which contemplated, if necessary, the use of rate reductions.

2. The rate reductions must have been determined upon and employed by those defendants not for the purpose of meeting truck competition, but pursuant to that conspiracy for the specific and deliberate purpose of driving truckers, including the plaintiff, from the business of hauling ammunition and explosives for the government.

3. The rate reductions must have damaged plaintiff and the evidence must provide you with a reasonable basis for estimating the amount of this damage. (Defendants' Instruction 4-5, as modified.)

I might mention at this time, that in connection with the rate reduction evidence, as well as other evidence in the case, there has been introduced what the law calls expert testimony. In this connection, you are instructed that a person who by education, study and experience has become an expert in any art, science or profession and who is called as a witness, may give his opinion as to any matter in which he is specially versed and which is material to the case. It should be considered and weighed by you like any other evidence in the case. You are not bound by it if the facts upon which the opinion is based have not been established to your satisfaction by the evidence. Further, in this case there has been some conflict in the testimony of expert witnesses. By considering and weighing the credibility and qualifications of the respective experts who have testified; the logic of the reasons given in support of their opinions; the other evidence in the case which favors or opposes a given opinion, and by using your own experience and good judgment as reasonable and intelligent people, you must resolve that conflict and determine which of the opinions to accept as accurate. (Standard Instructions 18 and 19 as modified.)

Now, again, in connection with the rate reductions, the plaintiff makes no claim that any of the so-called point to point reductions damaged it. (Defendants' Instruction 4-3, as modified) As I have mentioned so often, the intent of each railroad defendant in making these rate reductions is of primary importance in this case. Thus, as I have instructed you with respect to each, unless you are convinced by a fair preponderance of the evidence that the rate reductions made by the particular defendant were made for the purpose of driving plaintiff and other truckers out of the government explosives business instead of to meet the competition, those rate reductions are to be disregarded in this case, and this purpose, of course, may be derived from all the evidence and depends on the existence of the alleged pre-existing conspiracy. (Defendants' Instruction 4-7, as modified.)

There has been introduced into evidence excerpts from the testimony in the so-called reparations cases, which I have previously mentioned. One of these cases involved the question of whether the rates charged by the railroads for the transportation of ammunition and explosives from 1942-1945 were unreasonably high. The Commission held that they were not. (Defendants' Instruction 4-14, as modified.) Further, there has been extensive evidence on the question of whether the rate level established by the rate reductions of 1955 and 1956 was compensatory; that is, profitable. You should not consider that your only task in considering these rate reductions is to determine whether this level was compensatory or not compensatory. Plaintiff does not charge that these rates were not compensatory or that they were unreasonable. Any compensatory nature of the rates may be considered as a relevant factor in determining whether or not the reductions were made pursuant to a pre-existing conspiracy; that is, that factor would be a consideration in your determinations of the purpose of the rate reductions. However, in determining whether or not the reductions were or were not made pursuant to the alleged pre-existing conspiracy, it is that purpose, the purpose of the reductions, rather than the legality or illegality of the resulting level of rates, that is controlling in your decision on this point. (Plaintiff's Instruction 12, as modified.) Further, in ascertaining a railroad's intent in reducing rates, you must consider whether the rate reductions were necessitated by truck competition. In this regard, you may consider the testimony concerning the level of truck rates before and after the rate reductions were made. (Defendants' Instruction 4-10, as modified.)

Also, one of the things you should understand in the course of your deliberations is the general meaning and effect of Section 22 of the Interstate Commerce Act, which you have heard mentioned on several occasions in the context of Section 22 quotations. You will recall that the challenged rate reductions were made by the use of Section 22 of the Act, the so-called Section 22 quotations. Virtually all of the government ammunition and explosives

traffic, which is the subject of the plaintiff's charge against these defendants, moved under these so-called Section 22 quotations. Section 22 states, so far as it is applicable here, that "nothing in the Interstate Commerce Act shall prevent the carriage, storing or handling of property free or at reduced rates for the United States."

The rates on ammunition and explosives made in 1955 and 1956 were not, and did not have to be, under this section of the law, filed with the Interstate Commerce Commission. (Plaintiff's Instruction 26, as modified.) Therefore, whether or not these rates were reasonable or unreasonable, or discriminatory or non-discriminatory, under the standards of the Interstate Commerce Act, is not here for determination by you. You may assume, therefore, for purposes of this case, that each of these rates was in and of itself a lawful rate. You may also assume, as I have previously mentioned, that the procedure by which these rates were quoted was perfectly lawful rate-making procedure. (Plaintiff's Instruction 27, as modified.) Remember that the rate issue that you must determine is whether or not, regardless of the lawful means by which the rate reduction was accomplished and the lawfulness of the rates standing by themselves, the reduction was in fact made for a purpose which violates the antitrust laws. If the purpose of the reductions was in fact to carry out a conspiracy to monopolize the transportation of ammunition and explosives for the United States Government, then the defendants are liable for the resulting damages, if any, to the plaintiff, regardless of the legality of the reductions viewed apart from the conspiracy. (Plaintiff's Instruction 28, as modified.)

Now, before I instruct you on the law relating to damages, I wish to instruct you on certain matters which you have had explained from time to time during the course of the trial. You will recall that I told you that the Court had determined as a matter of law that all of the evidence introduced by the plaintiff might be received against all defendants. This does not mean, however, that the Court has decided either that the alleged conspiracy

has been proven or that the participation of any one of the defendants in the alleged conspiracy has been proven. The jury is the sole judge of these fact questions. You are further instructed that if you find from all the evidence that the conspiracy alleged by the plaintiff did in fact exist, that does not resolve the question of the participation of any defendant in that conspiracy. You still must decide as to each defendant whether that particular defendant did, in fact, participate in the alleged conspiracy. And, in determining whether or not a particular defendant did in fact participate in the alleged conspiracy, you must decide this solely on the basis of the evidence admitted against the particular defendant. (Defendants' Instruction 6-1, as modified.) Ordinarily, the law holds a person liable only by reason of his own acts and utterances. But where two or more persons combine to achieve an unlawful purpose, the acts and declarations of one during the existence, and in pursuance of the conspiracy are held in law to be the acts and declarations of the others. But one person may be held responsible for the acts or utterances of the other if, and only if, the two are acting in concert to a common unlawful purpose.

To illustrate one aspect of this rule I will give you a simple illustration of its application in a situation not related to this case. You will recall that I gave you this example from time to time during the trial. Suppose three persons, whom I shall call A, B and C, are charged with a conspiracy to rob a bank. Suppose further, that a letter written by A to B is introduced into evidence and this letter states that A has obtained three guns to be used by A, B and C in carrying out their plan to rob the bank. Now that letter could be considered by you as evidence that A had entered into a conspiracy to rob the bank and had obtained three guns for that purpose. But the letter is neither an act or declaration of B or C and, standing alone, could not be considered by you as proof that either B or C had participated in the conspiracy to rob the bank even though they are mentioned in the letter and the letter was mailed to C. (Defendants' Instruction 6-1-C, as modified.)

Further these declarations must be more than mere narratives. However, when a party joins an existing group already so engaged; that is, engaged in a conspiracy, then he assumes responsibility for all that has been done theretofore; that is, before the time he joins. All that was done before he entered may be used against him. (Defendants' Instruction 6-1-a as modified by Commonwealth v. Rogers, 63 N.E. 421; Logan v. U.S., 144 U.S. 263, 309; U.S. v. Gypsum, 67 F. Supp. 397)

You are further instructed in this regard, that all parties are presumed to intend the obvious and normal business consequences of their voluntary acts. (Plaintiff's Instruction 23, as modified.) Further, while there are many defendants to this action, it does not follow from that fact alone that if one is liable, all or others are liable. Each is entitled to a fair consideration of its own defense. These instructions I give you govern the case as to each defendant, to the same effect as if it were the only defendant in this action, and regardless of whether I refer to the defendant in the singular or use the plural form. Therefore, it is important that you give separate consideration to each defendant on the basis of its own acts and declarations, as shown by the evidence admitted against it or introduced in its behalf, in determining whether a particular defendant conspired. Therefore, you should not consider the defendants as a group, or the railroads as a group, or the Southern Railroads, for example, as a group, or the associations as a group. Each defendant, whether a railroad, railroad association or public relations firm, is entitled to separate consideration. (Defendants' Instruction 6-1B, as modified by Standard Instruction 23 as modified.)

I will now instruct you with respect to damages and the standards which the plaintiff must meet to sustain its burden of proving that it has been damaged. You are not to assume from the fact that I instruct you on damages that I hold the view that the plaintiff has or has not proved that any of the defendants engaged in a conspiracy or that any of them engaged in any acts in furtherance of such a conspiracy. Those matters, of course, are

for you the jury to decide. (Defendants' Instruction 5-1, as modified.)

Plaintiff has the burden of proving the existence of the causal relationship between defendants' alleged misconduct and some injury to the plaintiff. That is, it must prove by a fair preponderance of the evidence that its business or property has, in fact, been damaged as a direct result of a conspiracy, as previously defined, among two or more of the defendants.

(Defendants' Instruction 5-2, as modified.) Proof of this necessary causal relationship requires something more than proof that one or more of the defendants did something at or about the same time that the plaintiff's business declined. The plaintiff must show by positive proof that it suffered damages as a result of an unlawful conspiracy. (Defendants' Instruction 5-4) Further, if you find that the plaintiff is entitled to recover, you are not to allow as damages any loss of profits resulting from activities which you find to be illegal or any diminution in net worth resulting from profits which you find were earned through any illegal activities. (AWR 5-22, as modified.)

Further, the fact that the Court instructs you as to damages is not to be taken by you as an indication that the Court believes that the plaintiff is or is not entitled to damages. These instructions on damages are given to you solely to guide you in arriving at the amount of your verdict only in the event, as I have already mentioned, that you find from a fair preponderance of the evidence, and the instructions of the Court, that plaintiff is entitled to recover. Thus, if from the evidence, considered by you in the light of the instructions of the Court, you find that none of the defendants has conspired, then, of course, you will not need to observe these instructions which I give you concerning damages. (Defendants' Instruction 5-19, as modified.)

(HEADING OMITTED) Civil Action No. 4056-54 Filed October 13, 1960)

INSTRUCTIONS TO THE JURY*

FIRST DRAFT

*While instructing the jury, the Court will not, of course, refer to any citations of legal authorities, or indicate any other sources of the instructions.

- (1) Amended page 30
- (2) Insert I, pp. 30-A and 30-B
- (3) Pages 40-46

ammunition and explosives which had previously been granted to plaintiff under an application denominated MC-200 (Sub. No. 60 TA--meaning Temporary Authority). The ICC held that certain of the service in the transportation of ammunition and explosives which plaintiff was then carrying on was not within the scope of the authority granted in MC-200 (Sub 60(TA)) and therefore was not authorized. Plaintiff was directed to cease and desist from such operations and to limit its operations, under Sub 60 TA, to service particularly described by the ICC in its report. The plaintiff appealed this order of the ICC to the United States District Court for Missouri and to the Supreme Court of the United States, where it was affirmed and became effective on December 28, 1953, the effective date of the order having been postponed by successive stays issued respectively by the ICC, the District Court and the United States Supreme Court. (Defendants' Instruction 2-3, as modified.)

(See Insert No. 1, pages 30-A and 30-B)

Now in summary then, the principal overt acts charged in the original complaint filed on September 22, 1954 were the alleged defamatory public relations campaign, the alleged sponsoring of restrictive legislation and the alleged abuse of the privilege of intervention before the ICC and other regulatory and government agencies. This phrase "overt acts" means acts done to effect the object of the conspiracy. (Dahly v. U.S., 50 F2d 37, 42). In other words, before the offense of conspiracy is completed, one or more of the parties must do some act to effect the object of the conspiracy. Such act is termed an overt act. An overt act as effecting the object of a conspiracy must be one independent of the conspiracy and agreement. It must not be one of a series of acts constituting the agreement or conspiring together, but it must be a subsequent, independent act following the

complete agreement or conspiracy and done to carry into effect the object of the original combination. (U.S. v. Richards, 149 Fed. 443, 446)

The first issue you have to determine is whether or not there was in existence prior to the filing of the plaintiff's complaint on September 22, 1954, the conspiracy alleged in that complaint as I have summarized it for you. If you determine that there was no such conspiracy, you will return a verdict for the defendants. If you determine that there was such a conspiracy, and I do not suggest that there was or was not, then,

(30)

INSERT NO. 1

On July 14, 1952, the Public Utilities Commission of Ohio petitioned the Interstate Commerce Commission to revoke all of plaintiff's interstate operating authority through the State of Ohio, alleging that plaintiff had committed an excessive number of violations of the laws of the State of Ohio and the regulations of the PUCO and the ICC in the course of its operations through that state. This petition was designated by the ICC as MC-C-1413. The action of the PUCO in filing the petition was the only means by which the PUCO could obtain the relief which it sought. (Castle v. Hayes Freight Lines, 348 U.S. 61 (1954)).

Shortly after the PUCO filed its petition, Riss requested the ICC to compel the PUCO to furnish Riss with certain specific information respecting each of the violations charged by the PUCO's petition. By order dated May 21, 1953, the ICC granted that motion in part, and directed the PUCO to provide more specific information of the details of the violations which it charged. (Tr. 17,714-15)

On April 12, 1954, the ICC ordered the PUCO to furnish the particulars which the ICC had previously ordered it to furnish by its order of May 21, 1953, or to dismiss its petition if such particulars were not furnished. On April 23, 1954, the particulars were furnished and incorporated in an amended complaint.

After the ICC granted a later motion by Riss to strike certain of the violations originally charged, the PUCO ultimately filed its Third Amended Complaint with the ICC on January 12, 1955. That Third Amended Complaint is in evidence here as C & O exhibit 59.

In September, 1954, the PUCO formally requested the ICC to investigate the safety of operations of Riss & Company. In April, 1954 Riss & Company had informally and voluntarily asked the ICC to make an investigation of the safety of its operations, but the ICC did not then order such an investigation.

On March 24, 1955, the ICC on its own motion ordered an investigation into the safety of Riss & Company's operations, for the purpose of determining the extent of plaintiff's compliance with the (-30-A-) Interstate Commerce Act and the ICC's rules and regulations issued thereunder. That order provided that, if Riss were found to have wilfully violated the law, an order might be entered immediately suspending Riss's operating authority, or in the alternative, that an order could be entered requiring compliance and, if Riss thereafter failed to comply with that order, its authority could be revoked. This proceeding was designated MC-C-1783.

By order of the Commission, MC-C-1413 and MC-C-1783 were heard on a joint record in a single hearing. On September 26, 1957 the ICC declined to revoke or to suspend Riss & Company's authority, but held that the plaintiff was not then in substantial compliance with certain of the rules and regulations prescribed by the ICC relative to safety. The ICC then ordered plaintiff to cease and desist from violations of the type described in the ICC's opinion, and to bring its operations into substantial compliance with all of the rules and regulations of the ICC relating to safety. The ICC did not terminate the case at that time, and held the proceedings open for the purpose of enabling Riss to show after the expiration of one year from the effective date of the Commission's order (November 4, 1957), that it was then in substantial compliance, and to permit the

State of Ohio or the ICC's own enforcement branch to obtain an order of suspension or revocation if Riss did not establish such compliance.

On May 2, 1958, Riss did petition the ICC for an immediate hearing at which Riss offered to prove its compliance with the Commission's requirements (Plaintiff's Exhibit 19). By order dated June 16, 1958 (Plaintiff's Exhibit 20) the ICC denied Riss's request for a hearing at that time on the grounds that that request was premature, since the Commission's September, 1957 order had directed that a full year elapse before Riss could seek to terminate the compliance order. On August 5, 1959 Riss & Company petitioned the ICC for a dismissal of the proceeding, upon the ground that it had then achieved substantial compliance with the regulations in question. On January 27, 1960 the ICC found that Riss had brought its operations into substantial compliance with the regulations in question, and the proceeding was dismissed. At the same time the prior cease and desist order was vacated. (-30-B-)

Now, remember, that you have to find two things in regard to this question of damages, if you find that the conspiracy alleged did in fact take place. First, you must find that the actions of the defendants were the cause of plaintiff's losses, if any, and, second, you must determine the amount of those losses, if any. In other words, before you start calculating what the amount is, you must first find that the plaintiff was injured as a result of any action on the part of the defendants. Now, in this regard, the plaintiff contends that the alleged conspiracy of the defendants and the overt acts pursuant to it, including the rate reductions were what caused its losses, if any. Defendants, on the contrary, have introduced evidence which they claim shows that many other causes or events caused the injury, if any, and not any action that they allegedly took against the plaintiff. Plaintiff has denied that these events or causes were what made its business decline, if it did decline. You will recall the great amount of evidence introduced on this subject of damages and its alleged causes. I will not undertake

to review it for you at this time. However, these issues on what caused the damages, if any, to the plaintiffs are for you the jury to decide, and you may consider all of the factors and all the evidence relating to it. The plaintiff, however, must show in this connection that the defendants alleged unlawful acts were either a cause of a specific fraction of its losses, or a more substantial cause of its losses than was any other known factor. (Momand v. Universal Film Exchange, 72 F. Supp. 469, 482) You may not render a verdict based on speculation or guesswork, but on the other hand, you may act on the probable or inferential, as well as on direct and positive proof. (Bigelow v. RKO, 327 U.S. 251, 260.)

Now plaintiff cannot recover in this action for any damages incurred prior to September 22, 1953. (Defendants' Instruction 5-20) Further, plaintiff cannot recover in this action for any damages incurred after January 31, 1958, when its supplemental complaint was filed, even if such damages were caused by the alleged conspiracy. (Defendants' Instruction 5-21) Further, if you find that plaintiff has suffered any damage by (-40-) reason of the action or inaction of the ICC or other regulatory agencies, the enactment or failure of enactment of any statutes, ordinances or regulations or the enforcement or lack of enforcement of any statutes, ordinances or regulations, such damages are the result of governmental acts of the states or federal government and may not be made the basis for any recovery in this action. (Defendants' Instruction 5-12, as amended.)

Further, if you find that the rate reductions were the only acts for which the defendants were responsible that injured the plaintiff, then in determining the amount of plaintiff's damages, you must consider only the losses plaintiff experienced, if any, in the period October 17, 1955--January 28, 1958, that is following the general rate reductions.

In this case, plaintiff has sought to measure its damages by showing the amount of the injury allegedly sustained to the good will of its business; that is, the product of an estimate of the earning prospects of the business.

(Plaintiff's Instruction 18, as modified.)

Now injury to good will is the kind of injury for which a plaintiff injured by a violation of the antitrust laws may recover damages--of course, whether or not such damages are recoverable in this case, and the amount thereof, are matters of fact solely for your determination. (Plaintiff's Instruction 19, as modified.)

In determining the amount of plaintiff's damages, and by this I do not mean to infer that it has or has not been damaged since that is a question for you the jury to decide, you may take into account any estimates by experts on what it would have earned, absent the alleged actions of the defendants; what the plaintiff earned in the past (that is, before the alleged acts complained of), and what plaintiff's earnings were when compared with a comparable competitor. (Clark, Damages in Private Antitrust Suits, 52 Mich. L. Rev. 363-413 (1954) citing Bigelow and Storey Parchment and other cases.) In this case, the plaintiff claims that it has provided the best available evidence from which a reasonable estimate of the alleged damage to its good will may be made. The defendants on the other hand claim that the plaintiff's evidence does not show such damages and, in any event, it is not the best available evidence of such damages, (-41-) if any. Of course, this is a matter for you the jury to determine from all the evidence in the case. Now in regard to this matter of the evidence offered on the extent of the plaintiff's alleged damages, you must keep in mind that in cases of this sort the plaintiff does not have to prove his injury to an exact dollars and cents amount. It is sufficient if plaintiff's evidence on the extent of his alleged damages is a reasonable basis from which the jury may draw a reasonable inference or estimate of the extent of the damages, if any. The weight of this evidence offered by the plaintiff is, of course, for you the jury to decide. As I have mentioned, the amount of the plaintiff's damages, if any, cannot be left to speculation or conjecture, but it need not be proven with complete exactness either. It is sufficient if you

find that there is a sufficient basis in the evidence from which a reasonable estimate of the plaintiff's losses, if any, may be reasonably inferred. Of course, in this connection, you must keep in mind my earlier remarks to the effect that the plaintiff has the burden of proving that the alleged unlawful acts of the defendants were either a cause of a specific fraction of its losses, if any, or were a more substantial cause of his losses than was any other known factor. (Storey Parchment v. Patterson, 282 U.S. 555 (1931); Bigelow v. RKO, 327 U.S. 251 (1946)) Of course, it goes without saying that you cannot award the plaintiff damages for any losses which you find were caused by acts for which the defendants were not responsible.

Basically then, the plaintiff's theory of damages is that certain activities of the defendants have caused a diminution of the going concern value of Riss & Company. In order to collect damages on this theory, plaintiff must first have proved by a fair preponderance of the evidence that activities of some or all of the defendants did, in fact, cause an injury to Riss & Company, and, second, plaintiff must also have provided you with a reasonable basis for estimating the amount by which the going concern value was lessened by activities of the defendants as distinguished from other causes. (Defendants' Instruction 5-17, as modified.)

In any event, if you find for the plaintiff, and, of course, (-42-) I do not suggest that you either do or do not so find, your verdict will be a single verdict for a single sum against all of the defendants you find liable for the alleged conspiracy, and you will not undertake to apportion the plaintiff's damages against such defendants. If you find from all the evidence that the conspiracy alleged actually existed and that the plaintiff was injured thereby, your verdict for the amount of such damages as you find from all the evidence resulted from the injury will be a verdict for a single lump sum against all of the defendants, if any, that you find to be so liable. (Plaintiff's Instruction 22, as modified.)

These remarks conclude my instructions concerning the liability and damages aspects of the case. I will now conclude with some additional remarks concerning the types of evidence which you have heard and some aspects of your duties as jurors. You will recall that in this case certain testimony has been read to you by way of what is called in law a deposition. You are instructed that this testimony is entitled to the same consideration, the same rebuttable presumption that the witness speaks the truth, and the same judgment on your part with reference to its weight, as is the testimony of the witnesses who have confronted you on the witness stand, and you are not to discount it merely because it comes to you in the form of a deposition. (Standard Instruction 17, as modified.)

Further, plaintiff and various defendants have, in the course of preparing this case for trial, answered certain interrogatories; that is, questions propounded in written form by the opposing party and have agreed to certain admissions. You will recall that during the course of the trial some of these interrogatories and the answers thereto and certain admissions have been read to you. You are to accept such answers and admissions as true. (AWR 7-6, as modified.)

Now, if in these instructions any rule, direction or idea has been conveyed in varying ways, no emphasis thereon is intended by me and none must be inferred by you. For that reason, you are not to single out any certain sentence or any individual point in the instruction and ignore the others, but you are to consider all of the instructions as a whole and to regard each in the light of all of the others. You are instructed again that if the court has said or done anything which has suggested to you that it is inclined to favor the claims or the positions of either party, you will not permit yourself to be influenced by any such suggestion. I have not expressed nor intended to express, nor have I intimated or intended to intimate to you any opinion as to what witnesses are or are not worthy of credence, what facts are or are not established by the evidence, or what inferences should be

drawn from the evidence adduced.

If any expression of mine has seemed to indicate any opinion relating to any of these matters, I instruct you to disregard it. From time to time, observing jurors, and you have been especially observant during the course of this trial, watch a judge and try to determine whether he sustains the objections on one side more than he sustains them on the other, or whether he appears to rule more favorably toward one side or the other, and to try from some observation method like that to get an idea of what the Court thinks about a case.

To repeat, if any of you have by chance received any impression as to how the Court feels about this matter, I want you to dismiss that entirely from your mind because, as I have said on more than one occasion, you and you alone are the sole judges of the facts in this case and the credibility of the witnesses. I would also like to point out that in all of my rulings on the evidence and the objections and everything that has been before me, I have ruled as I thought the law requires me to rule, without ever intending to favor or to intimate any favor towards one side or the other in the case.

If the Court has made a mistake in its interpretation of the law in this case, then that is a matter that must be dealt with by our Court of Appeals. To repeat again, it is the duty of the jurors to accept the law as stated to them by the Court and to apply the law to the (-44-) facts in the case.

It is your duty as jurors to consult with one another and to deliberate with a view to reaching an agreement, if you can do so without violence to your individual judgment. To each of you I would say that you must decide the case for yourself but you should do so only after discussing it with your fellow jurors, and you should not hesitate to change an opinion when convinced that it is erroneous. You should not be influenced to vote in any way on any question submitted to you by the single fact that a majority of the jurors, or any of them, favor a particular decision or hold an opinion at

variance with your own. In other words, you should not surrender your honest convictions concerning the effect or weight of evidence for the mere purpose returning a verdict or solely because of the opinion of the other jurors. (Standard Instruction 3)

Your verdict, of course, must be unanimous as to each party in the case.

Now, the attitude and the conduct of jurors at the outset of their deliberations are matters of considerable importance. It is not discreet for a juror, upon entering the jury room, to voice an emphatic expression of his opinion, or to announce his determination to stand for a certain verdict. When one does that at the outset, his sense of pride may cause him to hesitate to recede from an announced position if and when shown that it is wrong. Remember, that you are not partisans or advocates in this matter, but are now judges. The final test of the quality of your service will lie in the verdict which you return to the courtroom, not in the opinions any of you may hold before agreement on a verdict. Bear in mind that you will make a definite contribution to efficient judicial administration if you arrive at a just and proper verdict in this case. To that end, the Court reminds you that in your deliberations in the jury room, there can be no triumph of other than the ascertainment and declaration of the truth. (Standard Instruction 4, as modified.)

You must weigh and consider this case without regard to (-45-) sympathy, prejudice, or passion for or against any party to the action. (Standard Instruction 17)

The Court will assume for the record that all rulings heretofore made by the Court in connection with rulings on proposed instructions of law are preserved for all parties to this suit. So that you are all continued on the record for any objections heretofore submitted to prayers offered by either side. First of all, do any of the attorneys for either side have any objections to any part of the charge as given, other than those objections

which have already been made a matter of record? Does any party request any further instructions other than those just given by the Court?

When you go to the jury room, you will elect a foreman, and when you have reached a verdict which must be unanimous, you will notify the marshall, who, in turn, will inform the Court.

(This will conclude the principal part of the charge with the exception that the Court will say something to the alternate jurors before excusing them, etc.)

(-46-)

ADDITIONAL REQUEST FOR INSTRUCTIONS (4th Series)
ON BEHALF OF ASSOCIATION OF WESTERN RAILWAYS AND
WESTERN RAILROAD DEFENDANTS.

(Filed October 12, 1960)

(HEADING OMITTED) Civil Action 4056-54

(Excerpt)

Plaintiff contends in this case that some or all of the defendants conspired together to obtain a monopoly of the explosives business and to put plaintiff out of business by reliance on means other than lower rates or better service. Certain of the defendants in this case, including the AAR, the AWR, the ERPC, and Carl Byoir, did not participate in the rate reductions of which plaintiff complains. Even if you should find that one or more of these rate reductions were taken in furtherance of the pre-existing conspiracy alleged by the plaintiff, you should not find the defendants named above, or any other similarly situated, responsible for any damage resulting from such rate cuts unless you find that such defendants knowingly approved or ratified the making of these rate reductions or a means of furthering the pre-existing conspiracy. (4-18)

(HEADING OMITTED)

Civil Action 4056-54

DEFENDANT'S PROPOSED INSTRUCTION TO JURY - Filed October 13, 1960

It is my duty at this time to instruct you concerning the rules of law to be followed and applied by you in deciding this case. You have the duty of determining the facts and of deciding whether or not the plaintiff should be awarded damages by applying the law to the factual situation which you find to exist. In determining the facts you must limit your consideration to the testimony, documents and other exhibits which I have admitted into evidence. You are the sole judges of the facts, except for those facts which must be taken as true as of a matter of law and about which I shall instruct you as we go along. My instructions as to the applicable rules of law or as to facts deemed to be true as a matter of law are binding upon you and must be accepted and applied by you in deciding this case. (A-1)

This is an action under a Federal statute known as the Sherman Antitrust Act. A person, including a corporation such as plaintiff, who has been injured in his business or property by a violation of that Act is entitled to bring an action for his damages. The only violation complained of in this action is an alleged conspiracy to monopolize the business of transporting ammunition and explosives for the United States Government. Plaintiff alleges, and each defendant denies, that all the defendants agreed and combined together to monopolize that traffic for all railroads interested in the traffic, not just for the defendants. (A-2)

The fact that plaintiff has complained of a violation of the Sherman Antitrust Act does not indicate in any way that a violation has occurred. The fact that plaintiff has seen fit to name a number of parties as defendants does not indicate in any way that any two or more of these defendants conspired. Anyone may complain that the law has been violated, but it is for you to decide from the evidence and in accordance with my instructions whether any of these defendants have in fact conspired to monopolize the business of transporting ammunition and explosives for the United States Government in violation of the Sherman Antitrust Act. The fact that plaintiff

has complained only about a conspiracy to monopolize the transportation of ammunition and explosives for the United States Government is significant in that it limits the matters with which you properly may be concerned. You are not to concern yourselves with whether any of the defendants have violated some other law. The plaintiff must prove the particular violation of which it complains and that it was damaged in an ascertainable amount by that particular violation if it is to be awarded damages in this lawsuit. (A-3)

The plaintiff, Riss & Company, Inc., is a corporation certificated by the Interstate Commerce Commission to engage as a common carrier in the business of transporting freight by motor vehicle. It has transported various commodities, including ammunition and explosives, both for the United States Government and for private, commercial shippers. Plaintiff may lawfully transport property in interstate commerce only to the extent that such transportation is authorized by the Interstate Commerce Commission and is performed in accordance with the Interstate Commerce Act and with the regulations and orders of the Interstate Commerce Commission. (A-4)

There are 28 separate defendants, of which 23 are railroad companies engaged in the business of transporting property as common carriers over routes authorized by the Interstate Commerce Commission, four are railroad associations, and one is a public relations concern. (A-5)

Fifteen of the railroad defendants have all or the preponderance of their trackage located in Western Territory. They are:

(1) The Atchison, Topeka and Santa Fe Railway Company, which has sometimes been referred to as the "Santa Fe."

(2) Chicago, Burlington & Quincy Railroad Company, which has sometimes been referred to as the "Burlington."

(3) Chicago & Northwestern Railway Company, which has sometimes been referred to as the "Northwestern."

(4) Chicago, Milwaukee, St. Paul & Pacific Railroad Company, which has sometimes been referred to as the "Milwaukee. "

(5) Chicago, Rock Island & Pacific Railroad Company, which has sometimes been referred to as the "Rock Island. "

(6) Great Northern Railway Company, which has sometimes been referred to as the "Great Northern. "

(7) Illinois Central Railroad Company, which has sometimes been referred to as the "Illinois Central. "

(8) Missouri-Kansas-Texas Railroad Company, which has sometimes been referred to as the "Katy. "

(9) Minneapolis, St. Paul & Sault Ste. Marie Railroad Company, which has sometimes been referred to as the "Soo. " (Page 1 of A-6)

(10) Missouri Pacific Railroad Company, which has sometimes been referred to as the "Missouri Pacific. "

(11) Northern Pacific Railway Company, which has sometimes been referred to as the "Northern Pacific. "

(12) St. Louis-San Francisco Railway Company, which has sometimes been referred to as the "Frisco. "

(13) Southern Pacific Company, which has sometimes been referred to as the "Southern Pacific. "

(14) Union Pacific Railroad Company, which has sometimes been referred to as the "Union Pacific. "

(15) Wabash Railroad Company, which has sometimes been referred to as the "Wabash. " (Page 2 of A-6)

Five of the railroad defendants have all or the preponderance of their trackage located in Eastern Territory. They are:

(1) Baltimore & Ohio Railroad Company, sometimes referred to as the "B. & O. "

(2) The Chesapeake & Ohio Railway Company, sometimes referred to as the "C. & O. "

(3) Erie Railroad Company, sometimes referred to as the "Erie."

(4) The New York Central Railroad Company, sometimes referred to as the "New York Central."

(5) The Pennsylvania Railroad Company, sometimes referred to as the "Pennsylvania." (A-7)

Three of the railroad defendants have all or the preponderance of their trackage located in Southern Territory. They are:

(1) Atlantic Coast Line Railroad Company, sometimes referred to as the "Coast Line."

(2) Seaboard Air Line Railroad Company, sometimes referred to as the "Seaboard."

(3) Southern Railway Company, sometimes referred to as the "Southern." (A-8)

The defendant Association of American Railroads, which has sometimes been referred to as "AAR", is an unincorporated association which in 1954 numbered among its members some 131 railroads. It performs many necessary and proper activities for the railroad industry most of which have nothing to do with this case. [Plaintiff's Exh. 188; Tr. vol. 33, pp. 5424-5449.] Plaintiff concedes, and I so charge you as a matter of law, that it is a lawful organization and that membership by a railroad defendant in AAR is not in itself evidence of participation in the alleged conspiracy. [Answers to Western Railroads' Interrogatories. D. 14(f), (g).] (A-9)

The defendant Association of Western Railways, which has sometimes been referred to as the "AWR", is an unincorporated association which in 1955 numbered among its members some 64 Western railroads. The only defendants which are members of AWR are the 15 Western railroad defendants, and none of the 5 Eastern railroad defendants nor the 3 Southern railroad defendants are members. The AWR performs many necessary and proper activities on behalf of its members, most of which have nothing to do with this case. [Plaintiff's Exh. 189A.] Plaintiff concedes, and I so

charge you as a matter of law, that it is a lawful organization and that membership by a railroad defendant in AWR is not in itself evidence of participation in the alleged conspiracy. [Answers to Western Railroads' Interrogatories D. 14(f), (g).] (A-10)

The defendant Eastern Railroad President Conference, which has sometimes been referred to as "ERPC", is an unincorporated association which in 1954 was composed of the presidents of some Eastern railroads, only five of which are defendants in this action. Those five are the five Eastern railroad defendants, and none of the 15 Western railroad defendants or the 3 Southern railroad defendants, or their presidents, are members of ERPC. ERPC performs many necessary and proper functions for the Eastern railroads, most of which have nothing to do with this case. [Plaintiff's Exh. 191-A.] Plaintiff concedes, and I so charge you as a matter of law, that it is a lawful organization and that membership by the president of a railroad defendant in ERPC is not in itself evidence of participation in the alleged conspiracy. [Answers to Western Railroad Interrogatories D. 14(f) (g).] (A-11)

The defendant Traffic Executive Association--Eastern Railroads, which has sometimes been referred to as "TEA" or "TEA-ER", is a railroad rate bureau which in 1954 numbered among its members some 29 railroads that operate either wholly or partially in Eastern Territory. The five Eastern railroad defendants are members of TEA. TEA operates pursuant to an Agreement, introduced in evidence as TEA Exh. 5053, which was approved by the Interstate Commerce Commission. That Agreement defines the functions and procedures of the Association, governs the relationship of the member railroads with the Association, and describes the duties and authority of the Chairman and other officers of the Association. In essence, TEA provides a means whereby railroads operating within Eastern Territory can engage in joint rate-making activities required or authorized by the

Interstate Commerce Act. The duties and authority of the Chairman of TEA are administrative in nature, and he does not have a vote on the rate matters coming before the Association. [Plaintiff's Exh. 191B; TEA Exh. 5053; Tr. Vol. 67, pp. 11281-11294; vol. 75, pp. 12439-12440.] Plaintiff concedes, and I so charge you as a matter of law, that TEA is a lawful organization and that membership by a railroad defendant in TEA is not evidence of participation in the alleged conspiracy. [Answers to Western Railroad Interrogatories D. 14(f), (g).] (A-12)

Defendant Carl Byoir & Associates, which has sometimes been referred to as "Byoir", is a corporation engaged in public relations activities on behalf of many clients. It entered into a contract, effective August 15, 1949, to perform public relations work for defendant ERPC. [Plaintiff's Exh. 49.] There is no evidence that any other defendant has employed Byoir for any purpose. (A-13)

[The proposed instructions initially submitted by defendants under the designations 1-1, 1-2 and 1-3 have been withdrawn. This proposed instruction, now designated as 1-1, is a revision of the withdrawn instruction which was designated as 1-3.]

Plaintiff may not recover in this action unless you find from a clear preponderance of the evidence:

First, that prior to September 22, 1954 there was a conspiracy among some or all of the defendants having the specific purpose to monopolize the business of hauling ammunition and explosives for the Government;

Second, that acts done pursuant to this conspiracy created a dangerous probability that the parties to the conspiracy would and could monopolize the business of hauling ammunition and explosives for the Government;

Third, that this conspiracy was directed particularly to the elimination of Riss & Company as a competitor for such business; (Page 1 of 1-1)

Fourth, that plaintiff, in fact, has been damaged as a direct result of acts done pursuant to this conspiracy; and Fifth, that there is a basis in the evidence for you to determine by what amount, if any, the plaintiff has been damaged.

If you should determine any one of these factors adversely to the plaintiff, then your verdict must be for the defendants. [Standard Oil of New Jersey v. United States, 221 U.S. 1 (1911); American Tobacco Co. v. United States, 328 U.S. 781 (1946); United States v. Griffith, 334 U.S. 100 (1948).] (Page 2 of 1-1)

[The proposed instruction initially submitted under the designation 1-2 has been withdrawn.]

Plaintiff may not recover unless you find that a conspiracy to monopolize the transportation of ammunition and explosives for the Government had been entered into by two or more defendants before September 22, 1954, the date when the original complaint was filed, and that by that time acts done pursuant to the conspiracy, if any, had created a dangerous probability that the parties to the conspiracy would in fact obtain such a monopoly. (1-2)

[The proposed instruction initially submitted under the designation 1-3 has been withdrawn and resubmitted in revised form as 1-1]

There is another factor which plaintiff must prove in order to recover. Even if plaintiff proves all of the factors already mentioned, plaintiff has not proven a violation of the Sherman Antitrust Act unless plaintiff also proves that prior to September 22, 1954 the alleged conspiracy and acts done pursuant to it resulted in injury to the general public. This requirement is not met by proof that plaintiff was injured, even if such were the case. The Sherman Act was enacted for the protection of the public, not of individuals, and consequently there can be no violation of the Act unless the public has

been injured by the alleged conspiracy. [Wilder Mfg. Co. v. Corn Products Co., 236 U.S. 165, 174; Radiant Burners, Inc. v. Peoples Gas, Light & Coke Co., 273 F. 2d 196, 200 (C.A. 7); Hohensee v. Akron Beacon Journal Publishing Co., 171 F. Supp. 90, 174 F. Supp. 450 (N.D. Ohio), aff'd, 277 F. 2d 359 (C.A. 6).] (1-3)

[Substitute for the proposed instruction initially submitted under the designation 1-4, which has been withdrawn.]

Since the transportation of Government ammunition and explosives has not been monopolized, plaintiff must prove that some or all of the defendants attempted to monopolize that business pursuant to a conspiracy to monopolize the business. The phrase "attempt to monopolize" means the employment of methods, means and practices which would, if successful, have achieved a monopoly, and which, though falling short, approached so close as to create a dangerous probability of a monopoly, such methods, means and practices must have been employed by the members of and pursuant to a conspiracy to monopolize the transportation of Government ammunition and explosives. [American Tobacco Co. v. United States, 328 U.S. 781, 785; Swift & Co. v. United States, 196 U.S. 375; see Preliminary Instructions to the Jury, January 6, 1960, at p. 37.] (1-4)

If you find that two or more of the defendants agreed to monopolize the transportation of Government ammunition and explosives, in determining whether a dangerous probability of a monopoly was created, you must consider the competition provided by railroads not proven to be parties to this agreement as well as the competition provided by motor carriers. (1-4A)

The term monopolize in this case means the acquisition or maintenance by two or more of the defendants of monopoly power, i. e., the power to control and dominate the business of hauling ammunition and explosives for the Government to such an extent that they would have been able as a group to control the rates to be charged by all haulers of such traffic or by their own

actions to exclude actual and potential competitors from such business.

[Standard Oil of New Jersey v. United States, 221 U.S. 1 (1911); American Tobacco Co. v. United States, 328 U.S. 781 (1946); United States v. Griffith, 334 U.S. 100 (1946).] (1-5)

Power to control the rates to be charged, in the context of this case, means the ability to raise rates without running the risk of losing government ammunition explosives traffic to truck companies and other competitors. (1-6)

The offense of an attempt to monopolize requires proof that the parties to the alleged conspiracy had an actual, specific intent to obtain for themselves a monopoly of the relevant market by means of the overt acts engaged in by them pursuant to the alleged conspiracy. [United States v. Griffith, 334 U.S. 100, 105; Swift & Co., v. United States, 196 U.S. 375, 396.] In the context of this case, therefore, plaintiff must prove that the parties to the alleged conspiracy actually and specifically intended to obtain the power to control the rates charged the Government for the transportation of ammunition and explosives and to exclude others, whether railroads or motor carriers, from competing for that traffic. (1-6A)

The fact that monopoly power to control rates and eliminate competition was not acquired by the parties to the alleged conspiracy, if any, is a circumstance from which you may infer that the acquisition of such monopoly power was not intended. [Times-Picayune v. United States, 345 U.S. 594, 615-622; United States v. Steel Co., 334 U.S. 495, 531-534.] (1-6B)

The Sherman Act applies only to private action, and does not apply to governmental action or to the consequences of governmental action. [American Banana Co. v. United Fruit Co., 213 U.S. 347, 358; Mackay Radio & Tel. Co. v. Federal Communications Comm'n, 97 F. 2d 641, 643 (C.A.D.C.).] This is true regardless of whether the governmental action is that of the Federal Government or one of the departments or agencies of the Federal Government, such as the Interstate Commerce Commission,

[United States v. Rock Royal Coop., 307 U.S. 533, 560], or of a State or a state agency, such as the Public Utilities Commission of Ohio [Parker v. Brown, 317 U.S. 341, 350-352; Okefenokee Rural Electric Membership Corp. v. Florida Power & Light Corp., 214 F. 2d 413, 418 (C.A. 5)]. Nor does it matter whether the governmental action is the enactment of new legislation [Parker v. Brown, supra], such as the so-called 5,000 pound bills, or the application of existing legislation [United States v. Rock Royal Coop., supra], such as the Interstate Commerce Act or the National Transportation Policy. (1-6C)

You are instructed that an attempt to persuade, or persuasion of, a department of the Government to take action upon the basis of the National Transportation Policy enacted by Congress constitutes no evidence whatsoever of an unlawful intent under the Sherman Act. (1-6D)

The specific intent to monopolize the transportation of Government ammunition and explosives which plaintiff must prove must have existed apart from any intent that a defendant had to persuade any federal or state legislature or agency to take some governmental action and apart from any intent to achieve the result caused by such action. An intent to obtain a monopoly by means of governmental action is a lawful intent, and does not constitute, and is not evidence of, the unlawful intent which plaintiff must prove. (1-6E)

I have qualified several previous instructions concerning the types of intent which plaintiff must prove to prevail in this case to indicate that the intention to exclude competitors and to monopolize government ammunition and explosives must have been an intention to achieve these ends by the defendants' own actions and by means other than resort to the Interstate Commerce Commission. I have done this because as a necessary part of the Government's system of regulation in the transportation field railroads and trucks can and do intervene in all types of route authority proceedings to which their competitors are parties and advocate that the public

convenience and necessity does not require the grant of additional or new authority to these competitors. You are instructed that intervention in these proceedings and advocacy of limitations on a competitor's operating authority are proper, legal and desirable and can never constitute any evidence whatsoever of an intention to monopolize any kind of traffic or to exclude any competitors by any other means. (1-7)

In considering whether or not there was a dangerous probability that actual or potential competitors could and would be excluded from the business of hauling ammunition and explosives for the Government, you must consider evidence as to the following factors:

- (1) the number and relative size of such competitors or potential competitors;
- (2) the financial strength of such competitors or potential competitors;
- (3) the ease with which truck companies can enter this business, including such factors as the moderate capital outlay required and the fact that vehicles used to haul several commodities are suitable for or may easily and with little expense be converted to the hauling of explosives and ammunition; and
- (4) the power of the shipper, in this case the Government of the United States of America, its traffic policies and needs. [United States v. Columbia Steel Co., 334 U.S. 495, 527 (1948); Report of the Attorney General's National Committee to Study the Antitrust Laws, pp. 49-50.] (1-8)

Under Section 2 of the Sherman Act, the offense is the existence of the power to raise prices or exclude competition, by their own actions, coupled with "the purpose or intent to exercise that power." Thus plaintiff

must prove by a clear preponderance of the evidence that defendants had both the power and the purpose or intent to exercise that power. [United States v. Griffith, 334 U.S. 100, 105 (1948); American Tobacco Co. v. United States, 328 U.S. 781, 809 (1946); Swift & Co. v. United States, 196 U.S. 375, 396 (1928).] (1-9)

Unless you find that there was a conspiracy between two or more of the defendants to monopolize the transportation of ammunition and explosives for the Government accompanied by a dangerous probability of success, then you cannot find a violation of the Sherman Antitrust Act no matter how you may feel about the concerted activities of some or all of the defendants. Thus, you cannot find a violation here merely because you dislike or disagree with the nature of the public relations or other activities which may have been engaged in by defendants, or any of them. [Hunt v. Crumboch, 325 U.S. 821; Apex Hosiery Co. v. Leader, 310 U.S. 469.] (1-9A)

Plaintiff has the burden of proof with respect to all of its claims against defendants. It is not enough that there has been created in your minds some doubt or suspicion as to the conduct of the defendants; the plaintiff's proof must produce such a conviction in your minds as would influence you in the conduct of your business or daily affairs. The character of the proof must be such as you would be willing to act upon and base a judgment upon in the disposal of important matters. [Portion of charge approved in Theatre Enterprises v. Paramount Film Distributing Corp., 201 F. 2d 306 (4th Cir., 1953).] Unless you find that plaintiff has met its burden of proving a conspiracy by a clear preponderance of the evidence, you must return a verdict for the defendants. [Paramount Film Distributing Corp. v. Appelbaum, 217 F. 2d 101, 105 (C.A. 5, 1954); United States v. Employing Plasterers Ass'n of Chicago, 138 F. Supp. 546, 555 (N.D. Ill., 1956)] (1-10)

My instructions as to the burden of proof in this case mean that it is not up to any defendant to convince you that it did not engage in a conspiracy. (1-11)

It is the plaintiff's burden to establish by a clear preponderance of the evidence with respect to each defendant that it was a participant in the alleged conspiracy to monopolize the transportation of ammunition and explosives for the United States Government. You may draw no inference from the fact that any defendant did not produce witnesses or testimony to establish or deny any fact which it was the obligation of the plaintiff to establish. (1-11A)

If you determine that the weight of the evidence is against a finding that the defendants conspired to monopolize this business, or if you determine that the evidence is evenly balanced on this point, then, in either of these cases, your verdict must be for the defendants. (1-12)

In the context of this case you may find a conspiracy only if you find that there was an agreement, either express or implied, between two or more of the defendants to monopolize the business of hauling ammunition and explosives for the Government. (1-13)

There is no direct evidence of conspiracy in this case. (1-14)

In the absence of direct evidence, plaintiff can meet its burden of proving a conspiracy to monopolize only through circumstantial evidence. (1-15)

Before a conspiracy can be said to have been proved by circumstantial evidence alone, it is necessary not only that the circumstances proved by the evidence shall reasonably give rise to an inference of such conspiracy, but also that no other equally reasonable inference can be drawn from the same circumstances. If two equally reasonable inferences can be drawn from circumstances proved by the evidence, one consistent with the existence of the conspiracy sought to be proved and the other inconsistent therewith, you should not infer the existence of the conspiracy from such circumstances alone. [Portion of charge approved in Bigelow v. RKO Radio Pictures, Inc. (Tr. 2878) (N. D. Ill., 1944); Pevley Dairy Co. v. United States, 176 F. 2d 363, 367 (8th Cir., 1949).] (1-16)

Plaintiff has conceded that each of the acts of which it complains was lawful in itself. Consequently, I charge you that you must return a verdict for all defendants, regardless of the purpose with which such lawful acts may have been done. (1-16A)

Plaintiff concedes that each and every activity by means of which it contends the alleged conspiracy was carried out in itself is lawful under the antitrust laws. Each defendant had a lawful right,

- (1) to engage in public relations activities;
- (2) to seek legislation or the enforcement of existing laws against motor carriers;
- (3) to oppose motor carrier applications for operating before the ICC;
- (4) to solicit explosives traffic from the Government; and
- (5) to reduce rates for the transportation of ammunition and explosives.

Since each of these activities in itself was a lawful activity, no inference of participation in an unlawful conspiracy may be drawn from the mere fact that a defendant engaged in such activities either independently or jointly with others. [Johnson v. J.H. Yost Lumber Co., 117 F. 2d 53, 61 (C. A. 8, 1941).] (1-17)

You are instructed that the following acts, taken alone, together, or in conjunction with any other acts, do not constitute any evidence whatsoever of an intention by any defendant to monopolize any kind of traffic in violation of the antitrust laws:

1. Intervention and participation in the ICC proceedings in opposition to the applications of Riss and other truckers for permanent authority to transport explosives, which have been referred to as the Explosives Cases (MC 200 Sub 84 and Consolidated Cases).
2. Filing a petition with the ICC for interpretation of Riss & Co's temporary authority under MC 200 Sub 60TA, and the participation in

proceedings before the Federal District Court in Kansas City and the Supreme Court of the United States that sustained the ICC's order that Riss & Co. cease and desist operating in excess of its authority.

3. Intervention and participation in the ICC investigation of Riss & Co. operations (MCC 1783), which has been referred to as the Safety Case.

4. Intervention and participation in the ICC proceedings on the complaint of the Public Utility Commission against Riss & Co. (MCC 1413). (Page 1 of 1-17A)

5. Proposal or support of the enactment of any law by any State legislature.

6. Soliciting or urging the enforcement or application by the appropriate agency of any Federal or State law or regulations.

7. Preparation and distribution of substantially truthfully publicity on any matter of public interest. (Page 2 of 1-17A)

Plaintiff's claim must be judged separately as to each defendant, and the position of each defendant must be judged on its own merits. Each defendant, therefore, is entitled to individual consideration of the particular evidence applicable to it to determine whether that particular defendant participated in any conspiracy. You cannot return a verdict against any defendant unless you find specifically that that defendant conspired with one or more of the other defendants to monopolize explosives and ammunition traffic. (1-18)

If you should determine that there was a conspiracy to monopolize the business of hauling explosives and ammunition for the Government and I do not suggest there was, then in order for you to find that any individual defendant participated in that conspiracy, it must be shown that said defendant had "knowledge of the existence of that conspiracy" and that it "knowingly performed an act designed to promote or aid in the attainment of the object of that known conspiracy." [United States v. National City Lines, 186 F.

2d. 562, 571 (7th Cir., 1951).] (1-19)

By knowledge of the conspiracy, I mean knowledge of an agreement by others to engage in concerted action to obtain the unlawful purpose of conspiracy. One who has no knowledge of the object or purpose of a conspiracy cannot have agreed to participate in the conspiracy. [Stanley v. United States, 245 F. 2d 427, 430 (C.A. 6).] (1-19A)

In order to find that a defendant had knowledge of the conspiracy, if any, the evidence of knowledge must be clear and not equivocal. [Direct Sales Co. v. United States, 319 U.S. 703, 711.] (1-19B)

You are instructed that the fact that a defendant had knowledge of, or participated in, any or all of the following matters is not any evidence whatsoever that such defendant had knowledge of a conspiracy to monopolize the movement of ammunition and explosives for the United States:

1. Intervention and participation in the ICC proceedings in opposition to the applications of Riss and other truckers for permanent authority to transport explosives, which have been referred to as the Explosives Cases (MC 200 Sub 84 and Consolidated Cases).

2. Filing a petition with the ICC for interpretation of Riss & Co's temporary authority under MC 200 Sub 60TA, and the participation in proceedings before the Federal District Court in Kansas City and the Supreme Court of the United States that sustained the ICC's order that Riss & Co. cease and desist operating in excess of its authority.

3. Intervention and participation in the ICC investigation of Riss & Co. operations (MCC 1783), which has been referred to as the Safety Case.

4. Intervention and participation in the ICC proceedings on the complaint of the Public Utility Commission against Riss & Co. (MCC 1413).

5. Proposal or support of the enactment of any law by any State legislature. (Page 1 of 1-19C)

6. Soliciting or urging the enforcement or application by the appropriate agency of any Federal or State law or regulations.

7. Preparation and distribution of substantially truthful publicity on any matter of public interest. (Page 2 of 1-19C)

Even if it is proven that a particular defendant had knowledge of the conspiracy and engaged in an activity claimed to have been an act pursuant to it, you are not required to find that the particular defendant agreed to participate in the alleged conspiracy. Such proof merely permits you to infer agreement to participate in the alleged conspiracy, and such an inference should not be made unless you conclude that it is warranted after considering all of the relevant evidence. You might conclude, for example, after you have considered all the evidence, that the particular defendant engaged in the alleged act for its own reasons and in its own interests rather than because it had agreed with others to participate in the alleged conspiracy. (1-19D)

I instruct you that you may not find that any individual defendant participated in the alleged conspiracy by performing an act in furtherance of and with knowledge of the conspiracy unless you find that it had such knowledge and took such action prior to September 22, 1954. (1-19E)

If you should determine that there was a conspiracy to monopolize, and I do not suggest there was, recovery against any individual defendant can be had only for conduct which "the conspiracy contemplated and embraced" A defendant is chargeable with the acts of its fellow defendants only if the acts are done in the furtherance of the joint venture as all understood it; an individual defendant cannot be held for what some of the defendants, unknown to the rest, do beyond the reasonable intendment of the common understanding. [Momand v. Universal Film Exchange, 72 F. Supp. 469, 475, (D. C. Mass. 1947), aff'd 172 F. 2d 37 (C. A. 1, 1948), cert. den. 336 U.S. 967 (1949); Cf. United States v. Socony Vacuum Oil Co., 310 U.S. 150 (1940).] (1-20)

If you should determine that there was a conspiracy to monopolize, and I do not suggest there was, you cannot find a defendant liable for the

acts of his co-defendants which were not contemplated by their common understanding. If a defendant's co-defendant enters into unlawful undertakings with third parties, said defendant is not liable for acts performed by such co-defendant in furtherance of that latter conspiracy. [United States v. Andolschek, 142 F. 2d 503 (C. C. A. 2, 1944).] (1-21)

"Nobody is liable in conspiracy except for the fair import of the concerted purpose or agreement as he understands it; if later comers change that, he is not liable for the change; his liability is limited to the common purposes while he remains in it." [United States v. Peoni, 100 F. 2d 401 (C. C. A. 2, 1938).] (1-22)

Some of the defendants in this case are associations--associations of railroads or of their officers or employees. Such associations are useful organizations and are perfectly lawful. Moreover, there is absolutely nothing unlawful in any of the railroad defendants being members of one or many associations, or participating in their committees, their meetings or their other activities. [Sugar Institute v. United States, 297 U.S. 553 (1936); Maple Flooring Ass'n v. United States, 268 U.S. 563 (1925)]. (1-23)

Evidence of membership in, and representation on, the governing body of an association is not sufficient to establish participation by the member in an alleged conspiracy even though it may be proved that the association itself participated in the conspiracy. Members are not liable for the acts of an association unless they are shown to have actually known and approved of such activities and their unlawful objective. [Feldman v. North British & Mercantile Ins. Co., 137 F. 2d 266, 268 (4th Cir., 1943); Phelps Dodge Refining Corp. v. F. T. C., 139 F. 2d 393, 396 (2d Cir., 1943); Report of Attorney General's National Committee to Study the Antitrust Laws, page 42.] (1-24)

[Substitute for the proposed instruction initially submitted under the designation 1-25, which has been withdrawn.]

Evidence of participation by some members of an association in an illegal conspiracy is not sufficient to establish participation by the association or other members of the association in the conspiracy. The association is not liable for the acts of its members unless the association, as such, has directed or authorized the acts complained of. [Coronado Coal Company v. United Mine Workers, 268 U.S. 295 (1925); United Mine Workers v. Coronado Coal Company, 259 U.S. 344 (1922); Feldman v. North British & Mercantile Ins. Co., 137 F. 2d 266, 268 (4th Cir., 1943); United States v. Food & Grocery Bureau, 43 F. Supp. 966 (S.D. Cal., 1942).] (1-25)

You are instructed that you are to take decisions of the Interstate Commerce Commission as correct and right as a matter of fact and law, and you should not consider whether some other result would have been proper or more desirable than these proceedings. The Commission is charged by Congress with the power and authority to regulate transportation and its decisions are entitled to complete acceptance by the jury. (2-1)

There has been some dispute in this case concerning several ICC decisions involving plaintiff and its operating rights. It is my duty to instruct you on questions of law, and, accordingly, I will instruct you as to the issues in these cases and the legal effect of the Commission's decisions.

Docket MC 200 (Sub No. 84) is the designation assigned by the Interstate Commerce Commission to an application filed by plaintiff in 1947 for permanent authority to transport ammunition and explosives. In considering such an application, the Commission's responsibility was to decide (1) whether the authority sought was required by present or future public convenience and necessity, and (2) whether plaintiff as the carrier seeking such authority was fit, willing and able to perform the service sought. In such proceedings, competitors, including both other motor carriers and railroads, are permitted to participate in the proceedings and to present evidence to show why the application should not be granted. Both railroads and motor carriers opposed the plaintiff's application. The plaintiff's application was (2-2)

initially denied by the Commission, but this denial was vacated by the Supreme Court for the reason that it had not been heard by a duly qualified hearing examiner. The application was reinstated and new hearings were ordered in 1951. At that time, approximately 60 other motor carriers had also filed applications for permanent authority to transport ammunition and explosives. These other motor carriers in many instances sought authority to perform some of the same service sought by Riss & Company. In other instances they sought different or more extensive authority. The Commission heard the Riss application separately, but by agreement between the parties to both the Riss application and to the applications of the other motor carriers referred to above, evidence on behalf of the Department of Defense and on behalf of railroads and other parties that opposed the application was introduced during the Riss hearing and was incorporated by reference into the record made with respect to the other applications. Other railroads intervened in these proceedings at the time of the 1951 hearings.

On September 19, 1955, the ICC in its decision found that public convenience and necessity did not require the issuance to any motor carrier of permanent authority to haul ammunition and explosives. It did hold that temporary five-year authority should be granted with (p. 2 of 2-2) respect to four defined points to four of the 60 motor carrier applicants, of which plaintiff was one. The Commission, however, postponed actual grant of any authority to plaintiff pending further hearings with respect to its fitness in view of the then pending investigation directed by the ICC into the compliance of plaintiff with the Interstate Commerce Act and the rules and regulations issued thereunder. This postponement was beneficial to plaintiff. Under ICC rules plaintiff was permitted to operate under temporary authority all routes for which it had applied in the proceeding whereas a final decision in the case would have limited plaintiff's authority under this application to the few points as to which the Commission had found need for plaintiff's service. Finally, in September 1959 before any grant of new authority was actually made, the

plaintiff voluntarily asked the Commission to dismiss the application and the request was granted. [Riss and Company, Inc., Extension-Explosives, 64 MCC 299 (1955).] (p. 3 of 2-2)

In January, 1952, certain Eastern and Western railroads filed a petition with the Interstate Commerce Commission asking the Commission to interpret the scope of the temporary authority to transport ammunition and explosives which had previously been granted to plaintiff under an application denominated MC-200 (Sub No. 60TA). The ICC held that certain of the service in the transportation of ammunition and explosives which plaintiff was then admittedly carrying on was not within the scope of the authority granted in MC-200 (Sub No. 60TA), and therefore was not authorized. Plaintiff was directed to cease and desist from unauthorized operations, and to limit its operations, under Sub 60TA, to service particularly described by the ICC in its report. The principal effect of the order was to preclude plaintiff from originating traffic at a large number of military installations located primarily in Official Territory, and to preclude it from delivering traffic to such installations except via certain specified points. The plaintiff appealed this order of the ICC to the U.S. District Court for Missouri and to the Supreme Court of the United States, where it was affirmed and became effective on December 28, 1953. [Riss & Company, Inc., Interpretation of Temporary Authority, 54 MCC 531, 535 (1952); Riss & Company, Inc. v. United States, 117 F. Supp. 296 (W. D. Mo., 1952), aff'd, 346 U.S. 890 (1953)] (2-3)

On July 14, 1952, the Public Utilities Commission of Ohio petitioned the Interstate Commerce Commission to revoke all of plaintiff's interstate operating authority through the State of Ohio, alleging that plaintiff had committed an excessive number of violations of the laws of the State of Ohio and the regulations of the PUCO and the ICC in the course of its operations through that state. This petition was designated by the ICC as MC-C-1413.

The action of the PUCO in filing the petition was the only means by which the PUCO could obtain the relief which it sought. Castle v. Hayes Freight Lines, 348 U.S. 61 (1954).

On March 24, 1955, the ICC on its own motion ordered an investigation into the operations of plaintiff for the purpose of determining the extent of plaintiff's compliance with the Interstate Commerce Act, and the Commission's rules and regulations issued thereunder. This investigation proceeding was designated MC-C-1783. At the time this investigation was ordered, it included the question of compliance with rules and regulations having no relation to safety and also the question of plaintiff's compliance with the Commission's rules and regulations governing maximum hours of service of employees and safety of operation (2-4) and equipment. In general, these other matters were disposed of prior to the hearing.

By order of the Commission, MC-C-1413 and MC-C-1783 were heard on a joint record in a single hearing. On September 26, 1957, the ICC held that plaintiff was not in compliance with the Interstate Commerce Act or with the rules and regulations prescribed by the ICC relative to the qualifications and maximum hours of service of employees and safety of operation and equipment. The Commission issued an order requiring plaintiff to cease and desist from all violations of the type described, and further ordered it to bring its operations into compliance with the Act and the rules and regulations of the Commission. On January 27, 1960, plaintiff was found to have achieved substantial compliance with the Act and the rules and regulations of the Commission which had been ordered by the Commission. The cease and desist order was therefore vacated at that time. [Riss & Company, Inc., Investigation of Operation; Public Utilities Commission of Ohio v. Riss & Company et al., 72 MCC 659, 674 (1957)] (p. 2 of 2-4)

I instruct you that the decision of the ICC to issue a cease and desist order against plaintiff in the Safety Cases on September 26, 1957, was a

final, appealable order. Plaintiff had a right to appeal this order of the Commission but did not choose to do so. The fact that the ICC at a later date on a new showing found plaintiff to be in substantial compliance with the Act and the rules and regulations of the Commission at such later date in no way detracts from the validity or correctness of the original determination by the Commission. (2-5)

Some of the defendants solicited the appearance or testimony of witnesses in certain ICC proceedings involving plaintiff. This fact may not be considered by you as an act from which you can infer the existence of an unlawful conspiracy to monopolize Government explosives traffic. Such solicitation is commonplace and lawful in itself under the antitrust laws. (2-7)

"Sponsoring legislation and inciting administrative officials to do what must be taken as their duty cannot be an actionable wrong." [Mills Novelty Co. v. The Borden Co., 3 CCH Trade Reg. Rep., 8th ed., Section 25,041 (S. D. N. Y. 1937--Unreported); American Banana Co. v. United Fruit Co., 213 U.S. 347 (1909)] (3-1)

If you find that defendants or any of them engaged in any effort to obtain the enactment of any 5,000-pound bills which were introduced in various state legislatures, and I do not suggest they did, I instruct you that such action was not, in itself, unlawful. (3-2)

The advocacy and dissemination of idea, either through the means of publication in newspapers, magazines, radio, television, or any other form of written or verbal communication, and the solicitation of governmental restraints such as action by the ICC, PUCO, state or federal legislatures, or any other governmental body, are protected by the First Amendment of the Constitution and are not unlawful. [Talley v. California, 362 U.S. 60 (1960)] (3-3)

Nor is the advocacy or dissemination of ideas made unlawful by the non-disclosure of origin or authorship. The right to remain anonymous is

itself protected by the Constitutional guaranties of free speech, petition, and assembly. [Talley v. California, 362 U.S. 60 (1960)] (3-4)

Joint or concerted action by some or all of the defendants for the purpose of sponsoring or opposing the enactment of state and federal laws and local ordinances affecting their business interests did not in itself violate the Sherman Act, since the enactment or defeat of legislation affecting the interests of the members of an industry is a reasonable and lawful objective of joint or concerted action. (3-5)

Joint or concerted action by some or all of the defendants for the purpose of publicizing matters of public concern affecting the business interests of the defendants did not in itself violate the Sherman Act, since the publicizing of facts and opinions about matters in which defendants had a business interest is a reasonable and lawful objective of joint or concerted action. (3-6)

When a conspiracy in violation of the Sherman Act has been established, an act that is lawful in the sense that it does not in itself violate any law may under some circumstances be considered as done in furtherance of the conspiracy, [American Tobacco Co. v. United States, 328 U.S. 781.] However, an activity that is protected by the Constitution cannot be so regarded. I charge you as a matter of law that the First Amendment to the Constitution affirmatively protects substantially accurate publicity on matters of public interest and channels of communication with legislatures and Government agencies. Accordingly, you may not regard as any part of a violation of the Sherman Act, or allow damages for any injury to plaintiff which may have resulted from:

- (a) The dissemination of such publicity; or
- (b) The solicitation of legislative or other Governmental action.

(3-6A)

I instruct you that the carriage of ammunition or explosives over public highways is a matter of substantial public interest. (3-6B)

I instruct you that the press releases issued by certain states in connection with the filing of briefs by those states in the ICC in the Explosives Case (Plaintiff's Exhibits 87, 88B, 95A, and 97A through 101A) were approved by the Attorney Generals of those states and you may draw no inference from the fact that any defendant assisted in their preparation. (3-7)

Section 5a of the Interstate Commerce Act authorizes railroads to agree upon rates to be charged for railroad service. I find as a matter of law that the railroad rate actions in this case are covered by Section 5a of the Interstate Commerce Act and that they are exempt from the antitrust laws and accordingly in your deliberations in this case you must ignore for all purposes all evidence with respect to the rate reductions. (4-1)

Section 5a of the Interstate Commerce Act authorized railroads to agree on rates to be charged by the railroads and to employ for this purpose rate bureaus such as the Traffic Executives Association (TEA), the Southern Freight Association and the Western Traffic Association. You are instructed that all railroad rates here in question were made pursuant to the procedures specified in the various railroad rate agreements which have been approved by the Interstate Commerce Commission. Thus the manner in which rate reductions were arrived at was perfectly proper and legal and no inference may be drawn as to the existence of any conspiracy of any kind whatsoever from the fact that the railroads worked together on rates. (4-2)

When a conspiracy in violation of the Sherman Act has been established, an act that is lawful, in the sense that it does not itself violate any law, may under some circumstances be regarded as done in furtherance of the conspiracy. [American Tobacco Co. v. United States, 382 U.S. 781.] However, an action that is affirmatively authorized by the Congress cannot be so regarded. I charge you as a matter of law that Congress has affirmatively authorized the railroads to fix rates jointly in accordance with agreements approved by the

Interstate Commerce Commission, and that consequently you may not regard the general rate reductions of 1955 and 1956 as any part of a violation of the antitrust laws, and may not allow damages for any injury that may have resulted from such reductions. (4-2A)

The joint character of the rate actions complained of by plaintiff is no evidence whatever of a combination or concert of action forbidden by law. (4-2B)

There has been introduced into evidence in this case testimony relating to point-to-point reductions of rates on ammunition and explosives by the railroads. Plaintiff has conceded that such point-to-point reductions were made in order to meet competition and claims no damage as the result of any such reductions. Under these circumstances, I instruct you that plaintiff has no right to recover for any loss of business resulting from point-to-point reductions, even where reductions were to rates as low as or lower than the rates established by the various railroads in October 1955, and in March and April, 1956. (4-3)

There has been a great deal of testimony in this case concerning rate reductions on government ammunition and explosives made by the various defendant railroads in October 1955 and thereafter. You are instructed that plaintiff's showing of a connection between the rate reductions and any prior activity of the defendants in this case with respect to Riss & Company or other truckers is inadequate. Accordingly, in determining whether there was any conspiracy to monopolize government ammunition and explosives traffic, or, in assessing plaintiff's damages, if you decide there was such a conspiracy, you are to ignore all evidence with respect to rate reductions. (4-4)

In a supplemental complaint, filed on January 31, 1958, plaintiff alleged that certain adjustments in the general rail rate basis for the transportation of Government ammunition and explosives were made with the intent of eliminating motor-carrier competition for that traffic and as a

part of the conspiracy alleged by plaintiff in its original complaint filed on September 22, 1954. The adjustments in question were those that adopted the so-called Class 45/Class 36 general rate basis in October of 1955 and in March and April of 1956. They are the only railroad rates or rate-making activities about which plaintiff complains. (4-4A)

Plaintiff has no right to damages from any rate reductions of which plaintiff complains, unless his proof has convinced you by a clear preponderance of the evidence of each of the three following points:

1. Prior to the October 1955 rate reduction, two or more defendants must have been engaged in a conspiracy to monopolize government explosives traffic, which contemplated, if necessary, the use of predatory rate reductions.

2. The rate reductions must have been determined upon and employed by those defendants not for the purpose of meeting truck competition but for the specific and deliberate purpose of driving truckers, including the plaintiff, from the business of carrying ammunition and explosives for the government as part of an attempt to monopolize government explosives traffic and under circumstances where those defendants had reason to believe the reductions would have that result.

3. The rate reductions must have damaged plaintiff, and the evidence must provide you with a reasonable basis for estimating the amount of this damage. (4-5)

If you are not convinced by a clear preponderance of the evidence on any one of these points, you should ignore all evidence with respect to rate reductions in this case. /Atchison, Topeka & Santa Fe Ry. Co. v. Aircoach Transp. Assn., 253 F. 2d 877 (C.A. D.C. 1958)/ (Page 2 of 4-5)

If you find that pressure from the Department of Defense was responsible for the fact that the general basis of railroad rates to the Government on ammunitions and explosives was reduced in various parts of the country in October, 1955 and in March and April, 1956, then you must disregard

all testimony with respect to rate reductions in this case; specifically, if you believe that these rate reductions would not have been made but for pressure from the Department of Defense, then you cannot find that the rate reductions were made in furtherance of any conspiracy. (4-6)

If you find that defendants made a rate reduction in the belief that unless such a reduction was made the railroads would lose a significant additional amount of Government ammunition and explosives, you may not regard such reduction as done in furtherance of any conspiracy and may not award plaintiff damages for any injury that it may have suffered from such reduction. (4-6A)

From my preceding instructions you will recognize that the intent of each railroad defendant in making the rate reductions is of primary importance in this case. Thus, as I have instructed you with respect to each, unless you are convinced by a clear preponderance of the evidence that the rate reductions made by a particular defendant were made for the purpose of driving plaintiff and other truckers out of the government explosives business in furtherance of a conspiracy to monopolize that business, those rate reductions are to be disregarded in this case. The instructions that follow are intended to help you in ascertaining each railroad's intent in making these reductions.

(Illustrative instructions follow. More are to be added after a complete review of the rate case now being submitted.) (4-7)

The evidence establishes, and I so instruct you as a matter of law, that the reductions in the general rail rate basis did not eliminate motor-carrier competition for the transportation of Government ammunition and explosives. You cannot infer from the effect of the reductions, therefore, that elimination of motor-carrier competition was intended. The fact that motor-carrier competition was not eliminated, however, is a circumstance from which you may infer that elimination of motor-carrier competition was not intended. [Times-Picayune v. United States, 345 U.S. 594,

615-622; United States v. Steel Co., 334 U.S. 495, 531-534.] (4-7A)

The fact that a particular competitor is unable to continue to compete is one of the fortunes, or misfortunes, of the competitive free enterprise system which the antitrust laws were designed to promote, and does not constitute or evidence a violation of the antitrust laws. [Packard Motor Car Co. v. Webster Motor Car Co., 243 F. 2d 418, 420 (C.A. D. C.); Ben Hur Coal Co. v. Wells, 242 F. 2d 481, 486 (C.A. 10); Prairie Farmer Pub. Co. v. Indiana Farmer's G. Pub. Co., 88 F. 2d 979, 983-984 (C.A. 7); Fleetway, Inc. v. Public Service Interstate Transp. Co., 72 F. 2d 761, 763 (C.A. 3).] (4-7B)

In ascertaining a railroad's intent in reducing rates, you must consider whether the rate reductions by that railroad were justified by normal business considerations. In this connection it is important that hauling government ammunition traffic was still profitable after the rate reductions were made. (4-8)

Differences in the quality of services offered and in the prices or rates charged for such services are accepted means of competition. [Balian Ice Cream Co. v. Arden Farms Co., 104 F. Supp. 796, 801 (S. D. Cal.), aff'd, 231 F. 2d 356 (C.A. 9).] You may not infer, consequently, that a railroad intended to eliminate motor-carrier competition for the transportation of Government ammunition and explosives from the mere fact, even if you find it to be the fact, that the railroad reduced its rates for the transportation of that traffic below the motor-carrier rates in effect at the time. (4-8A)

In ascertaining a railroad's intent in reducing rates, you must consider whether the facts are that truckers first lowered their rates to get explosives business away from the railroads and whether later the railroad reduced its rates for the purpose of getting explosives business back or of avoiding further loss of such business. (4-9)

The evidence conclusively establishes, and I so instruct you as a

matter of law, that the amount of ammunition and explosives being transported by the Department of Defense, and thus the market for the transportation of Government ammunition and explosives, markedly diminished each year following the end of the Korean War in 1953, and that the relative share of this market being obtained by the railroads also was diminishing steadily prior to the reduction in the general rail rate basis. These are factors which you should consider in ascertaining whether the rate reductions were made for the purpose of meeting rather than eliminating competition. (4-9A)

The evidence conclusively establishes, and I so instruct you as a matter of law, that the rates provided by the reduced general rail rate basis were more than compensatory and thus that the transportation of ammunition and explosives at those rates was profitable to the railroads. This is a factor which you should consider in determining whether the rate reductions were made for the purpose of meeting rather than eliminating competition. (4-9B)

In ascertaining a railroad's intent in reducing rates, you must consider whether the rate reductions were necessitated by truck competition. In this connection you should consider testimony concerning the level of truck rates before and after the rate reductions were made. (4-10)

In ascertaining a railroad's intent in reducing rates, you must consider whether it believed that motor carriers would not be able to compete for the transportation of Government ammunition and explosives at the level of rates provided in the reduced general rail rate basis. The testimony of railroad rate officials that they believed motor carriers could compete at the reduced rates, the fact that motor carriers had already quoted rates as low or lower for the transportation of ammunition and explosives prior to the reductions and continued to do so after the reductions, and the fact that motor carriers continued to transport ammunition and explosives for the Government after the railroad rate reduction, are circumstances from which you may infer that the railroads believed that motor carriers would be able

to compete at the level of rates provided in the reduced general rate basis, and thus did not intend to eliminate motor-carrier competition in adopting that rate basis. (4-10A)

In ascertaining a railroad's intent in reducing rates, you must consider whether it agreed to the reduced general rail rate basis for the transportation of Government ammunition and explosives in order to meet the competition of other railroads that had quoted or signified their intention of quoting the reduced general rate basis. If you find that a railroad agreed to the reduced general rate basis in order to meet the competition of other railroads, then you cannot find that that railroad intended to eliminate motor-carrier competition. (4-10B)

In determining whether the several general rate reductions were made in furtherance of any conspiracy to monopolize government ammunition and explosives traffic (if you find that such a conspiracy existed), you must consider that the rate reductions were not put into effect uniformly, and simultaneously, as if pursuant to a prearranged plan, but were made through the separate rate bureaus at different times in different parts of the country in the light of local conditions, and were not made at all in other parts of the country. (4-11)

In determining whether the rate reductions were made in furtherance of any conspiracy to monopolize government ammunition and explosives traffic (if you find that such a conspiracy existed), you must consider with respect to each railroad whether the evidence shows that the men in the railroad who made the decisions to reduce the rates were instrumental in other activities of which the plaintiff complains, or were influenced by such activities. (4-12)

In ascertaining a railroad's intent in reducing rates, you must consider whether the reductions resulted from persuasion or pressure by the Department of Defense. (4-12A)

Price competition is an important and beneficial aspect of American business. Ordinarily competitors are free to reduce prices to obtain business from other competitors. The public benefits when one competitor or group of competitors, as the result of natural advantages or greater efficiency, can afford to reduce rates or prices, even though to levels which other competitors cannot meet and no cause of action under the antitrust laws or any other law is thereby created. In terms of this case, it is only when a pre-existing conspiracy to monopolize has been proved and when the rate reductions are made for the specific purpose of excluding competitors and accomplishing the object of that conspiracy that the rate reductions may be the basis of any recovery under the antitrust laws. (4-13)

An unlawful intent will not be presumed. It must be established by a fair and reasonable preponderance of the credible evidence. In the interplay of economic forces in a free society the normal intent of one competitor is to secure business at the expense of his competitor. The fact that the natural and expected consequence of such competition is loss of business by the unsuccessful competitor does not make the conduct unlawful. The fact that the intended result will be loss of business by a competitor does not make the intent unlawful.

I, therefore, instruct you that, in determining whether the defendants, or any of them, intended to monopolize the transportation of Government ammunition and explosives, you must consider not only the actions and conduct of the defendants and the competitive climate in which they acted, but you may consider their own statements regarding the intent with which they acted. In applying this principle, I further instruct you that, if the normal and expected consequences of the lawful action of any of the defendants in reducing their rates on ammunition and explosives was the retention or recapture of competitive traffic for the railroads, the knowledge of such consequences does not constitute an unlawful intent. (4-13A)

Plaintiff has introduced into evidence excerpts from testimony and the opinion given by the ICC in the so-called Reparations Cases. One of these cases involved the question of whether the rates charged by the railroads for hauling ammunition and explosives from 1942 to 1945 under war-time conditions and requirements were unreasonably high. The Commission held that they were not in view of all the circumstances and conditions then obtaining.

By 1955 when the first rate reductions were made, rail rates at issue in the Reparations Case had been raised over 100% and the conditions under which explosives were carried had been changed substantially. For these reasons, I instruct you that there is no inconsistency between the railroads' position in the Reparations Case--i. e., that 1942 rates were not too high--and their position in this case--i. e., that the 1955 rates were still compensatory after the reductions. (4-14)

The National Transportation Policy enacted by the Congress as a part of the Interstate Commerce Act (49 U. S. C. preceding Sec. 1) provides for the recognition and preservation of the inherent advantages, of each mode of transportation. One of the inherent advantages which a particular mode of transportation is entitled to enjoy is the advantage of lower costs in providing a particular service as compared with the costs to other modes of transportation in providing a similar service. [Schaffer Transp. Co. v. United States, 355 U. S. 83, 91.] If a particular mode of transportation is enabled to charge lower rates than another mode of transportation because its costs are lower, the charging of such lower rates is a lawful and proper realization of the inherent advantage of lower costs even though the intent or effect of such lower rates may be to eliminate competition for the traffic from the other mode of transportation. [Dixie Carriers v. United States, 351 U. S. 56; I. C. C. v. Mechling, 330 U. S. 567, 578-579.] (4-15)

The fact, if it be a fact, that there existed prior to September 22, 1954 a conspiracy to monopolize is not, in itself, evidence that the subsequent

adjustments in the general rail rate bases were a part of such conspiracy. The alleged activities prior to September 22, 1954 were entirely different in character from such adjustments, and there was a substantial time gap between such activities and such adjustments. In the context of this case, therefore, plaintiff must prove as to each particular defendant that it knew and understood that the conspiracy to monopolize the transportation of Government ammunition and explosives allegedly entered into prior to September 22, 1954, included within its scope or reasonable intendment adjustments in the general rail rate bases. (4-16)

Many of the railroad traffic officers who were responsible for the decision by their respective railroads to join in the quotation of the Class 45/Class 36 general rail rate basis have been witnesses in this proceeding, and have testified that they had no knowledge of any agreement or combination to eliminate the competition of motor carriers for the transportation of Government ammunition and explosives. If you believe the testimony of such a witness, then you cannot find that the railroad represented by that witness joined in the quotation of the Class 45/Class 36 rate basis pursuant to any such agreement or combination. (4-17)

I must now instruct you with respect to damages and the standards which plaintiff must meet to sustain its burden of proving that it has been damaged. You are not to assume from the fact that I instruct you on damages that I hold the view that the plaintiff has proved that any of the defendants engaged in a conspiracy to monopolize government ammunition and explosives traffic or that any of them engaged in any acts in furtherance of such a conspiracy. (5-1)

Plaintiff has the burden of proving the existence of the causal relationship between defendants' alleged misconduct and some injury to the plaintiff. That is, it must prove by a clear preponderance of the evidence that its business or property has in fact been damaged as a direct result of a conspiracy, as previously defined, among some or all of the defendants

to monopolize Government explosives traffic. [Thomsen v. Cayser, 243 U.S. 66, 89 (1917); Hart v. B.F. Keith Vaudeville Exchange, 12 F. 2d 341, 345 (2nd Cir., 1926); Dipson Theatres, Inc., v. Buffalo Theatres, Inc., 86 F. Supp. 716, 719 (W.D. N. Y., 1949); Alden-Rochelle, Inc. v. American Soc. of C. A. and P., 80 F. Supp. 888, 898 (S. D. N. Y. 1948); McWhirter v. Monroe Calculating Mach. Co., 76 F. Supp. 456, 465 (W.D. No. 1948)] (5-2)

Plaintiff's only claim for damages is "the product of an estimate of the earnings prospects of the business." [Plaintiff's Proposed Instruction, paragraph 18.] I charge you as a matter of law that plaintiff cannot recover for any damage to the earnings prospects of its business unless plaintiff has proved that such damages result from a permanent injury to its business proximately caused by activity for which defendants are responsible. Since plaintiff has offered no proof of such permanent injury, you must return a verdict for defendants. [Flintkote Company v. Lysfjord, 246 F. 2d 368, 394-396 (C. A. 9).] (5-2A)

I instruct you that "one who is only incidentally injured by a violation of the antitrust laws" cannot recover damages for such incidental injury in an action under the Sherman Act. In order to recover damages under the Sherman Act, it is necessary that the business injured have been within the "target area" of the antitrust violation; that is, the business injured must have been done "within that area of the economy which is endangered by a break-down of competitive conditions" as a result of the antitrust violation. [Karseal Corporation v. Richfield Oil Corporation, 221 F. 2d 358, 362-363 (C. A. 9); Conference of Studio Unions v. Loew's, Inc., 193 F. 2d 51, 54-55 (C. A. 9).] Thus, in the context of this case, even if plaintiff proves that some or all of the defendants conspired to monopolize the transportation of Government ammunition and explosives in violation of the Sherman Act, plaintiff cannot recover for any injury to its business of transporting commodities other than Government ammunition and explosives even if you should

find that such injury was caused by acts taken pursuant to the alleged conspiracy. [Frey & Son v. Welch Grape Juice Co., 240 Fed. 114, 117-118 (C. A. 4); cf., LaRouche v. United Shoe Machinery Corporation, 166 F. Supp. 633, 655 (D. Mass.).] (5-2B)

If you find that the rate reductions were the only acts for which any defendant is responsible in law that were the direct cause of injury to the plaintiff, in determining the amount of plaintiff's damages, you must consider only the losses plaintiff experienced, if any, in the period October 17, 1955 - January 28, 1958. (5-2C)

You may not return a verdict for the plaintiff in this case if it is uncertain or speculative as to whether any damage was in fact sustained by the plaintiff as the result of an unlawful conspiracy as defined previously among some or all of the defendants to monopolize government explosives traffic. [Story Parchment Co. v. Patterson Co., 282 U.S. 555 (1931); Chiplets, Inc. v. June Dairy Products Co., 114 F. Supp. 129, 143 D. N. J. 1953)] (5-3)

Proof of the necessary causal relation required something more than proof that one or more of the defendants did something at or about the time that the plaintiff's business declined. "Plaintiff must show by positive proof that he suffered damage as a result [of an unlawful conspiracy]." [E. V. Prentice Mach. Co. v. Associated Plywood Mills, Inc., 252 F. 2d 473 (9th Cir., 1958); McWhirter v. Monroe Calculating Mach. Co., 76 F. Supp. 456 (W. D. Mo. 1948)] (5-4)

Where a number of events may have affected the business of the plaintiff, the plaintiff has the burden of establishing that activities of the defendants in furtherance of the conspiracy alleged, rather than other factors, were the proximate and primary cause of the losses suffered by the plaintiff. [Momand v. Universal Film Exchanges, Inc., 72 F. Supp. 469 (D. Mass. 1947), aff'd 172 F. 2d 37 (1st Cir. 1948); cert. denied 336 U.S. 967 (1949);

Wolfe v. National Lead Co., 225 F. 2d 427, 431 (9th Cir. 1955); Flintkote Co. v. Lysfjord, 246 F. 2d 368 (9th Cir. 1957); Cape Cod Food Products, Inc., v. National Cranberry Ass'n, 119 F. Supp. 900 (D. Mass. 1954)] (5-5)

Plaintiff has the burden of proving that defendants' acts were either the cause of a specific fraction of its losses or the cause of substantially all of its losses. [Momand v. Universal Film Exchange, 72 F. Supp. 469, 481, aff'd, 172 F. 2d 37 (C. A. 1). ¶ (5-5A)]

Plaintiff may not recover unless you find from a preponderance of the evidence either (1) that actions of two or more defendants in violation of the Sherman Act was a more substantial reason than any other factor or combination of factors for any losses Riss & Co. may have experienced, or (2) that actions of two or more defendants in violation of the Sherman Act were the actual cause of a specific fraction of any losses Riss & Co. may have experienced. (5-5B)

If you find that actions of two or more defendants in violation of the Sherman Act were the actual cause of a specific fraction of any losses of Riss & Co., you may not award damages greater than such specific fraction of its losses. (5-5C)

I instruct you that plaintiff has not met its burden of proving that defendants' acts were a cause of a specific fraction of its losses. (5-5D)

I instruct you that plaintiff has not met its burden of proving that defendants' actions were the cause of substantially all of its losses. (5-5E)

I instruct you that plaintiff has not met its burden of proving that defendants' actions were a more substantial reason than any other factor or combination of factors for any losses that Riss & Company may have experienced. (5-5F)

A legal rate cannot cause any injury or damages for which recovery may be had by plaintiff in this antitrust action. [Keogh v. C. & N. W. Ry. Co., 260 U.S. 156, 162-163; Georgia v. Pennsylvania R. Co., 324 U.S. 439, 453.] Reduced rates for the transportation of Government property

are legal rates. [Eastern Freight Ways v. United States, 257 F. 2d 703, 705-706 (C. A. 2).] I instruct you as a matter of law that the rates complained of by plaintiff were legal rates under the Interstate Commerce Act and cannot give rise to damages recoverable by plaintiff in this lawsuit. (5-5G)

[Substitute for the proposed instructions initially submitted under the designation 5~~4~~6, which has been withdrawn.]

In determining whether or not plaintiff has met the burden of proving that defendants' acts were the cause of its losses or a specific fraction of them, you must consider all of the following factors:

- (1) the plaintiff's concentration on Government ammunition and explosives traffic;
- (2) the adequacy or inadequacy of plaintiff's management;
- (3) the termination of the Korean War as of July 27, 1953, followed by a substantial decline in total shipments of Government ammunition and explosives;
- (4) the ICC "cease and desist" order in MC 200 (Sub 60TA), effective December 28, 1953, which enjoined plaintiff from hauling ammunition and explosives directly to or from a number of points where it had enjoyed a substantial volume of such traffic;
- (5) the fact that plaintiff in 1954 undertook a new method of operation wherein owner-operators were replaced by company equipment;
- (6) the fact that plaintiff's new GM tractors and Fruehauf trailers, purchased in 1954, proved to be defective and were in some instances delayed in delivery, thereby increasing plaintiff's costs and lessening its ability to render service; (page 1 of 5-6)
- (7) the fact that in 1956 and 1957 plaintiff made another drastic change in its method of operation by adopting "piggy-back" service;
- (8) the fact that in 1957 the plaintiff again purchased Fruehauf trailers that were defective and were delivered later than plaintiff expected;

(9) the fact that the ICC in a public decision criticized plaintiff's safety record;

(10) the fact that plaintiff imposed a minimum charge for LTL shipments and discouraged LTL traffic;

(11) the fact that plaintiff closed a number of its terminals and thereby reduced its service to the public;

(12) the fact that the Leasing Rules promulgated in 1953 by the ICC affected plaintiff's method of operation;

(13) the fact that plaintiff had difficulty in making arrangements for the interchange of traffic originating at or to be delivered to points which it could no longer serve directly as a result of the order of the ICC in MC 200 (Sub 60TA);

(14) the fact that interchange arrangements with plaintiff were canceled or terminated by other carriers;

(15) the fact that plaintiff had difficulty in interchanging equipment because of incompatibility problems;

(16) the fact that an order of the ICC in MC 200 (Sub 46) restricted plaintiff's operations under claimed Monark grandfather rights in 1951;
(page 2 of 5-6)

(17) the fact that plaintiff's illegal control of Jarman Transportation Company was terminated in August, 1953;

(18) the fact that plaintiff's illegal control of O'Meara was terminated in 1953;

(19) the fact that plaintiff decreased the number of its solicitors and the amount of its solicitation of business;

(20) the fact that other motor carriers were authorized by the ICC to operate over routes served by plaintiff in competition with plaintiff;

(21) the fact that shippers utilizing plaintiff's services ceased or reduced such utilization because of dissatisfaction with the service provided by plaintiff or with plaintiff's business policies;

(22) the fact that specific point-to-point rail rates for the transportation of Government ammunition and explosives, which are not claimed by plaintiff to have been quoted pursuant to the alleged conspiracy, diverted Government ammunition and explosives traffic from plaintiff; and

(23) the fact that motor carrier competitors of plaintiff established or maintained rates for the transportation of Government ammunition and explosives which were lower than the rates being quoted by plaintiff for the transportation of such traffic.

I instruct you that none of the foregoing factors may be relied upon by plaintiff as evidence of any injury for which defendants are responsible or as evidence of any damages which may be recovered from defendants or any of them. (page 3 of 5-6)

A corporation, such as the plaintiff, has no character or feelings to be affected or injured by anything published or said about it. In order for you to find that plaintiff was injured by anything which the defendants published or caused to be published, you must find that that publication tended directly to affect the plaintiff's "credit or property or cause it pecuniary injury".

[Golden North Airways v. Tanana Publishing Co., 218 F. 2d 612 (C.A. 9)] (5-6A)

Plaintiff must prove it has suffered pecuniary injury to its business or property susceptible of expression in figures as a direct consequence of defendants' activities. [Keogh v. Chicago & N. W. Ry. Co., 260 U.S. 156, 165 (1922); Tepler v. Frick, 204 F. 2d 506 (2nd Cir. 1953); American Potato Driers, Inc., v. Peters, 184 F. 2d 165, 173 (4th Cir., 1950); Turner Glass Corp. v. Hartford Empire Co., 173 F. 2d 49 (7th Cir., 1949); Twin Ports Oil Co. v. Pure Oil Co., 119 F. 2d 747 (8th Cir., 1941)] (5-7)

Plaintiff has not introduced substantial evidence that it suffered any damage from any acts for which the defendants may be held responsible in law before the general rate reductions of October, 1955 and March and April, 1956. (5-8)

I instruct you that plaintiff's proof that Riss & Company was damaged by the railroad rate reductions in October, 1955 and March and April, 1956 is inadequate. Accordingly, you must disregard all evidence with respect to the rate reductions in this case. (5-9)

[Substitute for the proposed instruction initially submitted under the designation 5-10, which has been withdrawn and resubmitted in revised form as 5-11B]

I instruct you as a matter of law that any losses incurred by plaintiff as the result of the deficiencies in the tractors purchased from General Motors in 1954 cannot be considered by you as proof either of the fact of injury to plaintiff or of the amount of plaintiff's damages. I mean by this, in both this and subsequent instructions, that such losses cannot be relied upon to show any injury to plaintiff upon which liability of any defendant can be based or to show any amount of damages recoverable in this action. These losses are to be excluded from the damages, if any, that you may find in this case, and I do not mean to suggest that you should find any damages. (5-10)

[Substitute for the proposed instruction initially submitted under the designation 5-11, which has been withdrawn and resubmitted in revised form as 5-11D.]

I instruct you as a matter of law that losses incurred by plaintiff as a result of deficiencies in the operation of the trailers purchased from Fruehauf in 1954, or as a result of delays in the delivery of such trailers, cannot be considered by you as proof either of the fact of injury to plaintiff or of the amount of plaintiff's damages. (5-11)

To the extent that plaintiff has suffered any damage by reason of the action or inaction of the ICC or other regulatory agencies, the enactment or failure of enactment of any statutes, ordinances or regulations, or the enforcement or lack of enforcement of any statutes, ordinances or regulations, such damages are the result of governmental acts of the states or federal government and may not be made the basis for any recovery in this action. (5-12)

I instruct you as a matter of law that any losses incurred by plaintiff as the result of deficiencies in the operation of the trailers purchased from Fruehauf in 1957, or as a result of delays in the delivery of such trailers, cannot be considered by you as proof either of the fact of injury to plaintiff or of the amount of plaintiff's damages. (5-11A)

I instruct you as a matter of law that any losses incurred by plaintiff as a result of the cessation of the Korean War, on July 27, 1953, cannot be considered by you as proof either of the fact of injury to plaintiff or of the amount of plaintiff's damages. (5-11B)

I instruct you as a matter of law that any losses incurred by plaintiff as a result of the "cease and desist" order by the I. C. C. in MC 200 (Sub 60TA), effective December 28, 1953, cannot be considered by you as proof either of the fact of injury to plaintiff or of the amount of plaintiff's damages. (5-11C)

I instruct you as a matter of law that plaintiff's claimed loss of \$7,849,000 in gross revenues between the years 1953 and 1954 was the direct result of the Korean armistice and the ICC's order in MC 200 (Sub 60TA), and cannot be considered by you as proof either of the fact of injury to plaintiff or of the amount of plaintiff's damages. (5-11D)

I instruct you as a matter of law that any losses incurred by plaintiff as a result of the decision of the I. C. C. in MC 200 (Sub No. 84) or of any other action taken by the I. C. C. in that proceeding cannot be considered by you as proof either of the fact of injury to plaintiff or of the amount of plaintiff's damages. (5-11E)

I instruct you as a matter of law that any losses incurred by plaintiff as a result of the decision of the I. C. C. in the Safety Cases, the public comment by the I. C. C. in its opinion concerning plaintiff's shocking safety record and its adamant refusal to abide by I. C. C. safety regulations, or any other action by the I. C. C. in the Safety Cases cannot be considered by you as proof either of the fact of injury to plaintiff or of the amount of plaintiff's damages. (5-11F)

I instruct you as a matter of law that any losses incurred by plaintiff as a result of the I. C. C. 's leasing rules cannot be considered by you as proof either of the fact of injury to plaintiff or of the amount of plaintiff's damages. (5-11G)

I instruct you as a matter of law that any losses incurred by plaintiff as a result of the actions of the ICC in MC 200 (Sub 46) restricting plaintiff's operations under claimed Monark grandfather rights cannot be considered by you as proof either of the fact of injury to plaintiff or of the amount of plaintiff's damages. (5-11H)

I instruct you as a matter of law that any losses incurred by plaintiff as a result of the termination in 1953 of its illegal control of Jarman Transportation Company cannot be considered by you as proof either of the fact of injury to plaintiff or of the amount of plaintiff's damages. (5-11I)

I instruct you as a matter of law that any losses incurred by plaintiff as a result of the termination in 1953 of its illegal control of O'Meara cannot be considered by you as proof either of the fact of injury to plaintiff or of the amount of plaintiff's damages. (5-11J)

I instruct you as a matter of law that any losses incurred by plaintiff as a result of its concentration on Government ammunition and explosives traffic cannot be considered by you as proof either of the fact of injury to plaintiff or of the amount of plaintiff's damages. (5-11K)

I instruct you as a matter of law that any losses incurred by plaintiff as a result of the inadequacies of its management or of changes in management personnel cannot be considered by you as proof either of the fact of injury to plaintiff or of the amount of plaintiff's damages. (5-11L)

I instruct you as a matter of law that any losses incurred by plaintiff as a result of its change in 1954 from the use of owner-operators to the use of company-owned equipment cannot be considered by you as proof either of the fact of injury to plaintiff or of the amount of plaintiff's damages. (5-11M)

I instruct you as a matter of law that any losses incurred by plaintiff as a result of plaintiff's change in its method of operations, in 1956 and 1957, to extensive utilization of "piggy-back" service cannot be considered by you as proof either of the fact of injury to plaintiff or of the amount of plaintiff's damages. (5-11N)

I instruct you as a matter of law that any losses incurred by plaintiff as a result of the imposition of a minimum charge for LTL shipments or of otherwise discouraging such traffic cannot be considered by you as proof either of the fact of injury to plaintiff or of the amount of plaintiff's damages. (5-11-O)

I instruct you as a matter of law that any losses incurred by plaintiff as a result of the closing of terminals cannot be considered by you as proof either of the fact of injury to plaintiff or of the amount of plaintiff's damages. (5-11P)

I instruct you as a matter of law that any losses incurred by plaintiff as a result of decreases in the number of its solicitors or in its solicitation of business cannot be considered by you as proof either of the fact of injury to plaintiff or of the amount of plaintiff's damages. (5-11Q)

I instruct you as a matter of law that any losses incurred by plaintiff as a result of any actions taken by the Public Utilities Commission of Ohio cannot be considered by you as proof either of the fact of injury to plaintiff or of the amount of plaintiff's damages. (5-11R)

I instruct you as a matter of law that any losses incurred by plaintiff as a result of difficulties in making arrangements for the interchange of traffic originating at or to be delivered to points which it could no longer serve directly after the effective date of the order in MC 200 (Sub 60TA) cannot be considered by you as proof either of the fact of injury to plaintiff or of the amount of plaintiff's damages. (5-11S)

I instruct you as a matter of law that any losses incurred by plaintiff as a result of the cancellation or termination of interchange arrangements

with other carriers cannot be considered by you as proof either of the fact of injury to plaintiff or of the amount of plaintiff's damages. (5-11T)

I instruct you as a matter of law that any losses incurred by plaintiff as a result of difficulties in interchanging equipment with other carriers because of incompatibility of such equipment cannot be considered by you as proof either of the fact of injury to plaintiff or of the amount of plaintiff's damages. (5-11U)

I instruct you as a matter of law that any losses incurred by plaintiff as a result of the authorization by the ICC of other motor carriers to operate over routes served by plaintiff in competition with plaintiff cannot be considered by you as proof either of the fact of injury to plaintiff or of the amount of plaintiff's damages. (5-11V)

I instruct you as a matter of law that any losses incurred by plaintiff as a result of its inability to provide adequate service to its shippers, or of shipper dissatisfaction with its service or business policies, cannot be considered by you as proof either of the fact of injury to plaintiff or of the amount of plaintiff's damages. (5-11W)

I instruct you as a matter of law that any losses incurred by plaintiff as a result of specific point-to-point rail rates for the transportation of Government ammunition and explosives cannot be considered by you as proof either of the fact of injury to plaintiff or of the amount of plaintiff's damages. (5-11X)

I instruct you as a matter of law that any losses incurred by plaintiff as a result of rates established or maintained for the transportation of Government ammunition and explosives by motor carrier competitors of plaintiff cannot be considered by you as proof either of the fact of injury to plaintiff or of the amount of plaintiff's damages. (5-11Y)

[The instruction initially submitted under the designation 5-13 has been withdrawn and resubmitted in revised form as 5-11B.]

I instruct you that plaintiff has conceded that it suffered no loss of business in Government ammunition and explosives traffic by reason of any publicity prepared or circulated by defendants, or any of them. [Tr. Vol. 44, p. 7472; Vol. 45, pp. 7546-7547] Accordingly, in considering whether plaintiff has proved that it was in fact injured or damaged, you must ignore any decline in plaintiff's Government ammunition and explosives business which occurred prior to the general rate reductions in October 1955 and March and April 1956. (5-13)

[The instruction initially submitted under the designation 5-14 has been withdrawn.]

I instruct you that there is no proof that plaintiff lost any business in general commodities (products other than Government ammunition and explosives) by reason of publicity published or circulated by defendants, or any of them. (5-14)

[The instruction initially submitted under the designation 5-15 has been withdrawn and resubmitted in revised form as 5-13]

I instruct you that you cannot find any item of publicity to have caused injury or damage to plaintiff unless you first find that it was actually published or caused to be published by the defendants, or some of them, in pursuance of the alleged conspiracy, that it came to the attention of a substantial number of plaintiff's customers or potential customers, and that they withheld business from plaintiff in consequence. (5-15)

[The instruction initially submitted under the designation 5-16 has been withdrawn and resubmitted in revised form as 5-14.]

In order for you to find that plaintiff was injured by anything which the defendants published or caused to be published, you must find from a clear preponderance of the evidence that the publication caused "either the loss of particular customers by name, or a general diminution in its business" which was the "natural and direct result of the false publication." [Fowler

v. Curtis Publishing Co., 182 F. 2d 377, 379 (C. A. D. C.); Landstrom v. Thorpe, 189 F. 2d 46, 54-56 (C. A. 8); Erick Bowman Remedy Co. v. Jensen Salsbery Laboratories, 17 F. 2d 255, 261 (C. A. 8)] (5-16)

I instruct you that plaintiff has offered no proof whatsoever that any publicity prepared or circulated by defendants or any of them in fact caused any customer or potential customer to withhold business from plaintiff. (5-16A)

If you find that any item of publicity prepared or circulated by any defendant actually came to the attention of a substantial number of plaintiff's customers or potential customers, then you must consider whether such item defamed plaintiff. In order to defame plaintiff, such item of publicity must on its face have applied directly to plaintiff and tended directly to affect its credit or property or cause it monetary injury. (5-16B)

Published material directed toward the motor carrier industry generally, or any substantial segment of that industry, which does not make specific reference to plaintiff by name is not defamatory of plaintiff and could not cause it injury or damage. [Riss & Company, Inc. v. Association of American Railroads, C. A. No. 4056-54, Opinion filed August 8, 1960, and cases cited therein.] (5-16C)

Published material which contains comments or criticisms on matters of public interest is in a special category. In this connection the rule is that matters of public interest may lawfully be the subject of fair comment and criticism by the press and by the public generally, and such comment and criticism, however severe, is privileged if published in good faith and if it is based upon a substantially true statement of facts. Accordingly, you are instructed that if you find that the publications complained of meet these standards, you may not find that plaintiff was injured or damaged by such publications. (5-16D)

You are instructed that, in order to determine that the comment or criticism contained in the publications complained of was fair, it is not

necessary that you agree with the comment or consider that a majority of reasonable-minded men would agree with it. If you believe that such comment and criticism is an opinion or inference that might reasonably be drawn from the facts as shown by all the evidence in the case, though not necessarily the correct or most reasonable opinion or inference, you are instructed to find that the comment was fair. [Golden North Airways v. Tanana Publishing Company, 218 F. 2d 612, 626-629 (C. A. 9)] (5-16E)

You are instructed that the evidence in this case demonstrates that any statements the defendants or any of them may have made to the effect that the transportation of explosives by truck is more hazardous than their transportation by rail are in fact true. (5-16F)

If you find that the defendants or any of them could have reasonably held the opinion or drawn the inference from the facts known to them that the trucking of explosives was more hazardous than their transportation by rail, you are instructed to find that any statements the defendants or any of them made or published to this effect were fair comment on a matter of public interest. (5-16G)

There is no evidence indicating that plaintiff is fairly comparable with the six companies selected by Mr. Richard R. Riss, or the nine companies selected by the Management Planning, Inc. in their damage testimony. Accordingly, you may not consider the testimony of Mr. Riss or the Management Planning study or any of the evidence which has been introduced concerning these companies. The amount of sales or the profits of these companies has no bearing in any way upon the amount of sales or profits which plaintiff would have made had it not been for the alleged conspiracy. [Fargo Glass & Paint Co. v. Globe American, 201 F. 2d 534 (7th Cir., 1953)] (5-17)

The plaintiff has sought to establish his damages by a calculation based upon what he asserts his earnings would have been had it not been for the alleged attempt of the defendants to monopolize the movement of

ammunition and explosives for the United States. In deriving a figure of what those earnings would have been Mr. Richard R. Riss relied on the earnings trend of a selected group of companies, and Mr. Robert M. Meyer relied on the trend of the industry. If you find that earnings of Riss & Co. were adversely affected by the following factors to a degree substantially in excess of the effect of such factors on the group of carriers selected by Mr. Riss or on the industry generally, then calculations based upon such constructive earnings would be so speculative that you could not fairly rely upon them as a basis for measuring damages:

- (1) the plaintiff's concentration on government ammunition and explosives traffic;
- (2) the adequacy or inadequacy of plaintiff's management;
- (3) the termination of the Korean War as of July 27, 1953, followed by a substantial decline in total shipments of Government ammunition and explosives; (Page 1 of 5-17A)
- (4) the ICC "cease and desist" order in MC 200 (Sub 60TA), effective December 28, 1953, which enjoined plaintiff from hauling ammunition and explosives directly to or from a number of points where it had enjoyed a substantial volume of such traffic;
- (5) the fact that plaintiff in 1954 undertook a new method of operation wherein owner-operators were replaced by company equipment;
- (6) the fact that plaintiff's new GM tractors and Fruehauf trailers, purchased in 1954, proved to be defective and were in some instances delayed in delivery, thereby increasing plaintiff's costs and lessening its ability to render service;

- (7) the fact that in 1956 and 1957 plaintiff made another drastic change in its method of operation by adopting "piggy-back" service;
- (8) the fact that in 1957 the plaintiff again purchased Fruehauf trailers that were defective and were delivered later than plaintiff expected; (Page 2 of 5-17A)
- (9) the fact that the ICC in a public decision criticized plaintiff's safety record;
- (10) the fact that plaintiff imposed a minimum charge for LTL shipments and discouraged LTL traffic;
- (11) the fact that plaintiff closed a number of its terminals and thereby reduced its service to the public;
- (12) the fact that the Leasing Rules promulgated in 1953 by the ICC affected plaintiff's method of operation;
- (13) the fact that plaintiff had difficulty in making arrangements for the interchange of traffic originating at or to be delivered to points which it could no longer serve directly as a result of the order of the ICC in MC 200 (Sub 60TA);
- (14) the fact that interchange arrangements with plaintiff were canceled or terminated by other carriers;
- (15) the fact that plaintiff had difficulty in interchanging equipment because of incompatibility problems; (Page 3 of 5-17A)
- (16) the fact that an order of the ICC in MC 200 (Sub 46) restricted plaintiff's operations under claimed Monark grandfather rights in 1951;
- (17) the fact that plaintiff's illegal control of Jarman Transportation Company was terminated in August, 1953;

- (18) the fact that plaintiff's illegal control of O'Meara was terminated in 1953;
- (19) the fact that plaintiff decreased the number of its solicitors and the amount of its solicitation of business;
- (20) the fact that other motor carriers were authorized by the ICC to operate over routes served by plaintiff in competition with plaintiff;
- (21) the fact that shippers utilizing plaintiff's services ceased or reduced such utilization because of dissatisfaction with the service provided by plaintiff or with plaintiff's policies;
- (22) the fact that specific point-to-point rail rates for the transportation of Government ammunition and explosives, which are not claimed by plaintiff to have been quoted pursuant to the alleged conspiracy, diverted Government ammunition and explosives traffic from plaintiff; and (Page 4 of 5-17A)
- (23) the fact that motor carrier competitors of plaintiff established or maintained rates for the transportation of Government ammunition and explosives which were lower than the rates being quoted by plaintiff for the transportation of such traffic. (Page 5 of 5-17A)

If you find that the financial records of Riss & Co. are unreliable, or that the transactions between Riss & Co. and other business enterprises of the Riss family or the members of the Riss family make impossible an accurate appraisal of the financial condition of Riss & Co., then there is no basis in this case for ascertaining any damages to Riss & Co., and you must find for the defendants. (5-17B)

Plaintiff has attempted to measure the present and the estimated value of its business as its "going concern value." I instruct you, as a matter of law, that the "going concern value" of a business can never be less than the liquidating value of the business. (5-17C)

Under the antitrust laws, if a plaintiff is awarded damages by a jury, the court must then treble these damages and award a reasonable attorney's fee. "I caution you that you will not have to consider the trebling of damages or the amount of the attorney's fee. . . Under no circumstances are you to multiply the actual damages by two or three or any other number. The question of treble damages is a question for the court. Nor are you to allow anything on account of an attorney's fee. If the plaintiff is entitled to prevail, --and I do not suggest he either is or is not entitled to prevail, --then I have to [multiply any damage you award by three and] deal with the question of counsel fees." [Portion of the charge approved in Momand v. Universal Film Exchange, 72 F. Supp. 469, 482, aff'd 172 F. 2d 37 (C. A. 1, 1948); cert. den., 336 U.S. 967 (1949); J. J. Theatres v. 20th Century Fox, 112 F. Supp. 674, rev'd on other grounds 212 F. 2d 840 (C. A. 2, 1954)] (5-18)

Certain pleadings and answers to interrogatories filed by plaintiff in a lawsuit with Fruehauf Manufacturing Company have been introduced in evidence in this case. In those pleadings, Riss & Company claimed that it had been damaged by Fruehauf in specified amounts, and Mr. Richard R. Riss made a sworn statement concerning the details and amounts of those damages in the answers to Fruehauf's interrogatories. You will recall that Mr. Riss testified in this case that certain of the claims by Riss & Company against Fruehauf had been withdrawn just prior to the trial of that litigation. [PRR Exhs. 1048-1051, 1056; Tr. vol. 48, pp. 9747-9780.] In weighing this testimony, you should bear in mind that any damages which you may award to plaintiff in this case will automatically be trebled by the Court, while any damages proved by Riss & Company in the Fruehauf litigation would not be trebled or otherwise multiplied by the court in that case. You should consider whether this fact may have motivated plaintiff to reduce its claim of damages in the Fruehauf case in order to increase its chances of proving damages, or a larger amount of damages, in this case. Under no circumstances are you to multiply the actual damages proven by plaintiff, if any, by two or three or

any other number, as that is solely a function of the Court. (5-18A)

The fact that the Court has instructed you with respect to damages is not to be taken by you as an indication that the Court believes that plaintiff is entitled to recover damages. Such instructions are given to you solely to guide you in arriving at the amount of your verdict only in the event you find from the preponderance of the evidence and instructions of the Court that plaintiff is entitled to recover. Thus, if from the evidence, considered by you in the light of the instructions of the Court, you find that none of the defendants has conspired to monopolize transportation of ammunition and explosives for the government, then of course you will have no need to observe the instructions which the Court has given you concerning damages. (5-19)

Plaintiff cannot recover in this action for any damages incurred prior to September 22, 1953. [See defendants' memorandum on the statute of limitations.] (5-20)

Plaintiff cannot recover in this action for any damages incurred after January 31, 1958, when its supplemental complaint was filed, even if such damages were caused by the alleged conspiracy. [Flintkote Co. v. Lysfjord, 246 F. 2d 368, 395-396 (C. A. 9), and cases there cited.] (5-21)

You are instructed that this Court has determined, as a matter of law, that all of the evidence introduced by the plaintiff may be received against all defendants. This does not mean, however, that the Court has decided either that the alleged conspiracy has been proven or that the participation of any one of the defendants in the alleged conspiracy has been proven. The jury is the sole judge of these fact questions. You are further instructed that if you find from all the evidence that the conspiracy alleged by the plaintiff did in fact exist, that does not resolve the question of the participation of any defendant in that conspiracy. You still must decide as to each defendant whether that particular defendant did in fact participate in the alleged conspiracy. And in determining whether or not a particular defendant did in fact

participate in the alleged conspiracy, you must decide this question solely on the basis of the evidence independently admitted against the particular defendant. (Tr. 11,498-11, 499) (6-1)

Ordinarily, the law holds a person liable only by reason of his own acts or utterances. But where two or more persons conspire to achieve a common unlawful purpose, the acts and declarations of one during the existence, and in pursuance of the conspiracy, are held in law to be the acts and utterances of the others. But upon the application of this rule there are definite limitations which flow from its foundation, to-wit, one person may be held for the acts or utterances of another if, and only if, the two are acting in concert and to a common unlawful purpose. It is also necessary that the acts and declarations shall have some relation to the execution of the common purpose; declarations must be more than mere narratives. [United States v. United States Gypsum Co., 67 F. Supp. 397, 451-452 (D. D. C.), rev'd on other grounds, 333 U.S. 364.] (6-1A)

The large number of defendants in this case make it particularly important that you understand and follow my instructions concerning the separate consideration that you must give to each defendant on the basis of its own acts and declarations, as shown by the evidence independently admitted against it or introduced in its behalf, in determining whether a particular defendant conspired to monopolize the transportation of Government ammunition and explosives as claimed by plaintiff. In making this determination, you must not consider the defendants as a group, or the railroads as a group, or the Southern railroads, for example, as a group, or the associations as a group. Each defendant, whether a railroad, railroad association or a public relations concern, is entitled to separate consideration based solely on its own acts and declarations as shown by the evidence independently admitted against it or introduced in its behalf. (6-1B)

To illustrate one aspect of this rule, I will give you a simple illustration of its application in a situation not related to this case. You may recall that I gave this same example from time to time during the trial. [E.g., Tr. vol. 29, pp. 4888-4892.] Suppose three persons, whom I shall call A, B and C, are charged with a conspiracy to rob a bank. Let us suppose, further, that a letter written by A to B is introduced into evidence and this letter states that A has obtained three guns to be used by A, B and C in carrying out their plan to rob the bank. Now that letter could be considered by you as evidence that A entered into a conspiracy to rob the bank and had obtained three guns for that purpose. But the letter is neither an act nor a declaration of B and C and, standing alone, could not be considered by you as proof that either B or C had participated in the conspiracy to rob the bank even though they are mentioned in the letter and the letter was mailed to B.

I will now give you an example specifically related to this case. You will recall that plaintiff has introduced into evidence a large number of letters (Page 1 of 6-1C) and memoranda which were written by an officer or employee of one defendant or another or, in some instances, of a non-defendant. If one of those letters, for example, stated that the writer had attended a meeting together with representatives of other defendants and purported to relate the occurrences at that meeting, in determining whether any defendant participated in the alleged conspiracy the letter can be considered by you as evidence only against the defendant employing the writer of the letter. It should not be considered as such evidence against some other defendant, even if a copy was sent to such defendant and the letter expressly stated that it was represented at the meeting and participated in the occurrences. (Page 2 of 6-1C)

A proceeding of this nature and duration presents many trial problems, particularly where there are many parties. In the course of this trial, counsel have raised many objections to evidence, upon which I have ruled.

I charge you that as a matter of law that it is the duty of the lawyers in representing their clients to protect the record against the inclusion of improper evidence. You are not to consider the number or type of objections as evidence against any party. (6-2)

You cannot conclude from the mere fact that documents were found in the file of one defendant that that defendant or any other defendant knew about them. (6-3)

Any exhibit received in evidence which was accompanied by a stipulation concerning it or the circumstances surrounding its making must be considered in the light of that stipulation. The facts set forth in any such stipulation are to be taken by the jury as true. (6-4)

Richard R. Riss was the principal witness for the plaintiff in this action. If you believe that Mr. Riss testified falsely in any particular, then you may disregard his entire testimony. (6-5)

I have charged you with respect to various inferences which you may draw from certain aspects of the evidence. This does not mean that you are required to or must draw any such inference. On the contrary, it means only that you are permitted to draw such inferences if they are supported by a fair preponderance of the evidence and are reasonable under all of the circumstances. (6-6)

If a witness is not produced who is peculiarly available to plaintiff or to one of the defendants, then the jury has the right, if it wishes to do so--and it is entirely within the jury's discretion--to draw the inference that the testimony of that absent witness, the witness who was not called, would be unfavorable to the party to whom the witness is peculiarly available, unless the absence of the witness is sufficiently accounted for or explained. However, you may not draw such an inference where the plaintiff or a defendant fails to put on the stand a witness not deemed necessary to its case even though the witness is peculiarly available to the plaintiff or to such defendant and might conceivably have given testimony favorable to plaintiff or to such (6-7)

defendant. [The basis for defendants' proposed instructions 6-7 through 6-11 is set forth in Defendants' Memorandum With Respect to Instructing the Jury About the Inference Which May Be Drawn From the Failure of A Party to Call A Witness Peculiarly Within Its Power to Produce, filed September 14, 1960.] (6-7)

In order for a witness to be peculiarly available to a party, there must be at the time of the trial some legal relationship between the witness and the party, such as an employment relationship, which would give the party the power to compel the witness to testify. Furthermore, the circumstances must be such that the adverse party does not also have the power to compel the witness to testify. For example, a person who has been present in the courtroom during the course of the trial may be subpoenaed and compelled to testify by any party, and thus is not peculiarly available to the party by whom he is employed. In such circumstances, you may not draw an inference against any party from the failure of that person or some other person equally available to all parties to be called as a witness. (6-8)

The party that seeks to rely upon an inference from the failure of some other party to call a person as a witness has the burden of proving the circumstances which would permit you to draw such an inference. In other words, if plaintiff seeks to have you infer that the testimony of a witness would be unfavorable to a particular defendant, plaintiff must prove that the witness is peculiarly available to that defendant at the time of trial-- that the witness is an officer or employee of the particular defendant, for example, and cannot be subpoenaed or otherwise compelled by plaintiff to testify. Thus, if there is no evidence that an absent witness is employed by plaintiff or by a particular defendant at the time of the trial, or if the evidence affirmatively establishes that the absent witness is not so employed, as with respect to Mr. Joseph G. Kerr, for example, you may not draw any inference from the failure of plaintiff or of the particular defendant to call that person as a witness even if there is evidence that the person was employed

by plaintiff or by a particular defendant at some time prior to the trial. (6-9)

If you find that an absent witness has been proven to be peculiarly available to a particular defendant, you may--although you need not--infer that his testimony would have been unfavorable to that defendant, but you cannot and must not infer that his testimony would have been unfavorable to some other defendant to whom the absent witness has not been proven to be peculiarly available. In this regard, you should bear in mind that an absent witness is not peculiarly available to a defendant merely because plaintiff claims that he is a co-conspirator or is employed by a co-conspirator. The absent witness must be an employee or have some other legal relationship to the defendant against which an inference is sought to be drawn before such an inference is permissible. (6-10)

Finally, even if you conclude that an unfavorable inference should be drawn from the failure of plaintiff or of a particular defendant to produce a witness peculiarly available to plaintiff or to such defendant, that inference does not itself amount to substantive proof of some fact necessary to the case of plaintiff or of such defendant. For example, if a person who is peculiarly available to a particular defendant is not called as a witness by that defendant to testify about a document in evidence which was written by the person in question, you may, although you need not, infer that if the person had testified he would have confirmed what is said in the document. You should not infer, however, that the person in his testimony would go further and testify to some other fact such as that the activities described in the document were engaged in pursuant to a conspiracy to monopolize the transportation of Government ammunition and explosives. Plaintiff must establish that fact, if it is a fact, by affirmative independent evidence. (6-11)

If you find that any defendant has not produced evidence or testimony on any material issue, you are instructed that you cannot consider such failure as establishing or as tending to establish any fact essential to plaintiff's recovery against such defendant. (6-12)

This is a legal proceeding and you must not permit either sympathy or prejudice to affect your verdict in any way. (7-1)

You are instructed that no inference unfavorable to defendants is to be drawn from the mere fact that this suit has been brought by one plaintiff against several defendants. The evidence in this case shows that a great many truckers, including the plaintiff, and a great many railroads, including these railroad defendants, were engaged in and competing for government explosives traffic. The alignment of the parties here is the result of the fact that the plaintiff alone chose to bring this suit and to name those as defendants who are now before this Court. (7-2)

The mere fact that plaintiff has seen fit to join a number of parties as defendants does not, of course, mean that all or any of them are liable to the plaintiff. Unless as to each separate defendant its liability on the facts is proved according to the rules of law as I am now giving you, you must return a verdict for that defendant. (7-3)

All of the defendants in this case are either corporations or associations and are responsible only for acts which in the eyes of the law constitute acts of the corporation or association. They can act only through their agents, that is to say, through their employees and officers. It is important for you to bear in mind that not everything that is done in the name of a corporation or association, or by an officer or employee thereof, can properly be taken as an act of the corporation or association. Before you can find against any corporation or association on the basis of the acts or statements of its employees or officers, you must be satisfied that plaintiff has proved, with respect to each act upon which it relies, that the corporation or association authorized what the agent did or said. (7-4)

A corporation or association cannot be held liable for the acts or declarations of its agents pursuant to a conspiracy unless plaintiff proves that such acts were performed or that such declarations were made in the course and within the scope of the agent's employment by the corporation or

association. [Washington Gas Light Co. v. Lansden, 172 U.S. 534, 544; Flintkote Co. v. Lysfjord, 246 F. 2d 368, 383-385 (C.A. 9); Park Transfer Co. v. Lumbermen's Mutual Casualty Co., 142 F. 2d 100 (C.A. D. C.).] (7-4A)

Where participation in an alleged conspiracy to violate the antitrust laws is concerned, the evidence must justify a finding of actual authority in the agent to commit the corporation or association to participate in that conspiracy before the acts and declarations of an agent may be considered as evidence of participation by the corporation or association in the conspiracy. [Truck Drivers' Local No. 421, Etc. v. United States, 128 F. 2d 227, 235 (C.A. 8).] (7-4B)

The existence of actual authority in an agent to commit a corporation or association to participation in a conspiracy cannot be proven merely by showing that the agent is an employee or officer of the corporation or association, since an employee or officer is not authorized merely by virtue of his employment or office to make the corporation or association a party to an unlawful conspiracy. [United States v. International Fur Workers Union, 100 F. 2d 541, 547 (C.A. 2).] (7-4C)

In order to prove that a corporation or association participated in an unlawful conspiracy by evidence of the acts or declarations of an agent or agents of the corporation or association, plaintiff must first prove by independent evidence that the corporation or association directly authorized such actions or declarations, either orally or in writing, or that the corporation or association adopted such acts or declarations as its own either expressly or by conduct from which adoption may be inferred. [Flintkote Company v. Lysfjord, 246 F. 2d 368, 383 (C.A. 9); United States v. United Shoe Machinery Corporation, 89 F. Supp. 349, 353 (D. Mass.).] (7-4D)

Your verdict must be unanimous. You must all agree without reservations with the verdict you render. (7-5)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RISS & COMPANY, INC.,
a corporation
15 West 10th Street
Kansas City, Missouri,
Plaintiff

vs.

ASSOCIATION OF AMERICAN RAILROADS
Transportation Building
Washington 6, D. C.
et al
Defendants

Civil Action No. 4056-54

Filed October 13, 1960

DEFENDANTS' OBJECTIONS TO FIRST DRAFT
OF COURT'S INSTRUCTIONS TO THE JURY

The defendants object to the Court's proposed instruction to the jury on the following grounds:

1. The charge as a whole is prejudicial to a fair consideration of their defenses in that it is based upon the initial claims of the parties rather than on the evidence actually introduced.

2. The charge as a whole is prejudicial to a fair consideration of their defenses in that it states undisputed matters of fact as mere contentions of the said defendants.

The defendants further object:

1. To the denial of each instruction requested by defendants, or any of them, which is not contained in the charge;

2. To the modification of each instruction requested by defendants, or any of them, which is contained in the charge in such modified form;

3. To the elimination of parts of each instruction requested by defendants, or any of them, which is contained in the charge only in part.

In addition, the defendants object to the following specific portions of the proposed instructions for the reasons stated with respect to each such portion:

Page 7,
line 5

Defendants object to the inclusion in the Court's charge of the words, "to unreasonably restrain trade". Plaintiff throughout the trial has maintained the position that the particular violation complained of here is a conspiracy to monopolize the business of transporting ammunition and explosives for the United States. Defendants consider it highly prejudicial to inject a restraint of trade charge at the conclusion of the case. (See Defendants' Memorandum with respect to the Sherman Act aspects of the charge.)

Page 10,
Line 24

Defendants object to the omission in the Court's charge of the sentence in defendants' instruction A-12 which reads as follows: "the duties and authority of the Chairman of TEA are administrative in nature, and he does not have a vote on the rate matters coming before the Association. "

Page 11,
line 1

Defendants object to the Court's characterization of the services to be provided by Byoir to ERPC as "certain services". The contract clearly shows that the services were limited to public relations services.

Page 11
lines 3-21

Defendants object to the modifications of Defendants' Instructions 7-4, 7-4A and 7-4D. Defendants further object that the instruction as given does not inform the jury that the agent must have actual authority to commit his principal to participation in the alleged conspiracy, does not inform the jury that the authority of the agent must be proven by independent evidence and cannot be proven by independent evidence and cannot be proved from the acts and declarations sought to be attributed to his principal, and does not inform the jury that the authority of the agent cannot be derived or inferred from the circumstance alone that he is an officer or employee of the corporation or association in question.

Page 12,
lines 1-4

Defendants object to the language employed in that it assumes that the association defendants engaged in unlawful conspiratorial acts or made declarations with an unlawful objective.

Page 12,
line 5

Defendants object to the Court's modification of defendants' instruction 1-24 insofar as it has eliminated the first sentence in the instruction.

Page 12,
line 8

Defendants object to the modification of defendants' instruction 1-25 insofar as it omits the words "or other members of the Association" as they appear in the first sentence of the instruction.

Page 13,
line 3

Defendants object to the Court's modification of defendants' instruction 7-2. In failing to give defendants' instruction in full, the Court has left the instruction without a full and complete explanation.

Page 13,
lines 28-32,
and page 14,
lines 1-12

Defendants object to the paragraph beginning on line 29 because it contains two references to Section 1 of the Sherman Act (see Defendants' Memorandum with respect to the Sherman Act aspects of the charge). Defendants further object because the last sentence of the paragraph merely states plaintiff's claim. "Claims" made in pleadings or in argument fore the Court should not be stated to the jury.

Page 14,
lines 13-21

Defendants object to the paragraph beginning with line 14 because it introduces the rule of reason. The issue whether a restraint of trade was or was not reasonable is present only when the existence of a restraint is an issue in the case. It is not an issue here (see Defendants' Memorandum with respect to the Sherman Act aspects of the charge.)

Page 14,
lines 22-32

Defendants object to the paragraph beginning on line 24 because it states to the jury that the Act condemns any interference with free competition and "condemns all combinations and conspiracies which restrain the free and natural flow of trade in the channels of interstate commerce." This paragraph conveys to the jury the notion that they may find for the plaintiff if they find a conspiracy existed which restrained in any way the free and natural flow of trade. In this it plainly misstates the governing law, particularly in a regulated industry.

Page 15,
lines 2-20

The definition of monopoly contined in this paragraph is incomplete. The instruction conveys to the jury the idea that defendants would have illegally monopolized the business of ammunition and explosives if truckers had merely been unable to meet rail rates on ammunition which were compensatory to the railroads, i.e., if truckers had merely been unable to compete successfully with the railroads. The essence of monopoly is the acquisition of monopoly power. Monopoly power means the ability to raise rates without meeting competition, without facing the entry or re-entry of competitors into the business. "Courts have summed up monopoly earmarks as the power to control market prices or exclude competitors." (Attorney General's Committee Report, page 43, citing cases) (emphasis added). The Supreme Court has pointed out "that the material consideration in determining whether a monopoly exists is not that prices are raised and that competition actually is excluded, but that power exists to raise prices or to exclude competition when it is desired to do so." American Tobacco Co. vs. United States, 328 U.S. 781 at 811 (1946) (emphasis added). In a conspiracy to monopolize case, the plaintiff must prove that the defendants had the specific intent to obtain monopoly power so defined and further that there was a dangerous probability that they would obtain it. The defendants have the right to have the jury told that these are essential elements of plaintiff's case.

Page 15,
line 27
to
Page 16,
line 2

Defendants object on the ground that this passage incorrectly instructs the jury that, for purposes of this case, there is a difference between a joint attempt to

monopolize and a conspiracy to monopolize. (See Defendants' Memorandum with respect to the Sherman Act aspects of the charge.)

Page 16,
line 1

Defendants object to the inclusion of the words "or subjective.". This misstates the law.

Page 16,
lines 2-5

Defendants object that this sentence in the charge is unclear, and that it tends to mislead the jury in a manner prejudicial to defendants. All combinations presumably are entered into with "a specific purpose". But all combinations are not unlawful under the Sherman Act. At the very least, the "specific purpose" with which a combination is deliberately entered must be the precise specific unlawful purpose or intent about which plaintiff complains--that is, a specific purpose to monopolize the transportation of Government ammunition and explosives--if proof of the required specific intent is to merge with proof of the combination.

Page 16,
lines 6-7

Defendants object to the incorrect statement that the gist of the offense under Section 1 is the joint action of the alleged conspirators. No authority whatever exists for this assertion.

Page 16,
lines 5-34
to
Page 17,
line 3

Defendants object to charging the jury with respect to Section 1 of the Sherman Act. (See Defendants' Memorandum with respect to the Sherman Act aspects of the charge.)

Page 16,
lines 10-12

Defendants object on the ground that all practices which "subvert the natural interplay of competition" are not forbidden by law. This is particularly true of practices in a regulated industry such as rail transportation, where many cooperative, non-competitive practices are

required by law and where certain practices which "subvert the natural interplay of competition," such as joint rate-making, are expressly relieved from the operation of the antitrust laws.

Page 16,
lines 12-25

Defendants object to the illustration which indicates that the existence of a conspiracy to drive a competitor out of business without more, violates the Sherman Act, especially when part of a larger scheme to monopolize, on the ground that the illustration indicates that the mere existence of a combination or a conspiracy to drive a competitor out of business violates the law regardless of whether acts are engaged in which are intended to and which in fact do destroy the business of a competitor.

Furthermore, an agreement or combination to drive a competitor out of business does not necessarily violate the Sherman Act. (See Packard Motor Car Co. v. Webster Motor Car Co., 243 E.2d 418 (C.A. D. C.).)

Page 16,
line 32

Defendants object to the statement that combinations which foreclose competitors from a substantial market violate the Sherman Act. This statement is correct in a boycott case but is misleading and inappropriate in a case where that method of foreclosing competitors has not been charged. A proper rate reduction made with proper motive and without any pre-existing conspiracy can foreclose competitors from a substantial share of a market without violating the Sherman Act. It is misleading to tell the jury that mere foreclosure of competitors regardless of the means used is a violation of law.

Page 17,
lines 4-12

Defendants object to the paragraph beginning at line 4 on the ground that it tells the jury that there are three possible offenses here. (See Defendants' Memorandum with respect to the Sherman Act aspects of the conspiracy.)

Page 17,
lines 19-23

Plaintiff does not charge the use of unlawful means. Hence it would appear there is no occasion for any definition of a conspiracy "to accomplish a lawful objective by unlawful means."

Page 17,
lines 22-23

To be correct, this sentence should read, "Although no formal agreement is necessary to constitute a conspiracy, an actual agreement is necessary."

Page 18,
lines 8-11

The record contains no direct evidence of conspiracy, and the jury should be so instructed. See defendants' requested instruction 1-14.

Page 19,
line 5

Circumstances do not "speak for themselves" unless the facts which make up the circumstances are undisputed or established beyond peradventure.

Page 19,
lines 7-10

The figure of speech would be more appropriate in plaintiff's argument and is unnecessarily suggestive in a charge.

Page 19,
lines 18-27

More is required to constitute an illegal conspiracy than "that some character or manner of communication take place between them sufficient to enable them to reach a definite, mutual understanding of the common, unlawful objective or purpose to be thereafter accomplished and that they will unite or combine their efforts to that end." Plaintiff must at least prove that they did in fact reach such a mutual understanding, and not merely that circumstances were sufficient to enable them to reach such an understanding. Furthermore, in the circumstances of

this case, plaintiff must prove that a dangerous probability of monopolization was created by acts taken pursuant to this mutual understanding or agreement.

Page 19,
lines 28-29

The formation of a conspiracy does require "simultaneous action or agreement" on the part of at least two conspirators.

Page 20,
lines 19-20
and
lines 23-24

Defendants object to the words "to unreasonably restrain trade". (See Defendants' Memorandum with respect to the Sherman Act aspects of the charge.)

Page 21,
lines 9-19

Defendants object to the Court's modification in defendants' requested instruction 1-20.

Page 21,
lines 20-26

Defendants object to the Court's modification in defendants' requested instruction 1-21.

Page 22,
lines 1-6

This charge permits the jury to infer that a particular defendant knew of the alleged conspiracy, and to use this inference as the basis for a further inference that the particular defendant agreed to participate in the alleged conspiracy, thereby piling inference upon inference contrary to the holding in Direct Sales Co. v. United States, 319 U.S. 703, 711. Defendants further object that this charge permits the jury to infer knowledge from circumstances which can be reasonably explained in terms other than an unlawful intent or motive to monopolize the transportation of Government ammunition and explosives, contrary to the holding in Ingram v. United States, 360 U.S. 672, 679-680.

Page 22,
lines 7-14

Defendants object to the Court's modification in AWR's requested instruction 1-16B.

Page 22,
lines 15-17

The "effect" of a conspiracy cannot in any event be judged merely by looking at the conspiracy, either in its separate parts or as a whole. Such "effect" can only be judged by looking at the impact of acts in furtherance of the conspiracy upon facts extrinsic to the conspiracy.

Page 22,
lines 18-27

Defendants object to this paragraph of the instruction because it merely states plaintiff's claims. While it is appropriate for the Court's instructions to state conflicting claims where each is supported by evidence for the purpose of pointing up issues which the jury is to resolve, it is never proper merely to reiterate in the charge to the jury contentions which the plaintiff plans to make in argument. The instruction does not state the legal effect of this contention and it must be readily apparent that the case would not turn on this point even if it had been proved, which it was not. Reiteration of such claims in the Court's instruction can only give them an added validity in the eyes of the jury and can serve no useful or proper purpose in the case.

Page 22,
line 28

Plaintiff does not "claim", but rather concedes, that defendants' acts were lawful.

Page 22,
line 32
to

Page 23,
line 3

Defendants object to the description of the stated objective as "unlawful". An objective to obtain by lawful means 90% or any other percentage of the available business in the relevant market is not unlawful. To be unlawful, the objective must be to obtain for the parties to the combination (not for all railroads as stated in the charge) the power to control prices in the market and exclude competitors for the business, coupled with an intent to exercise that power. (United States v. DuPont & Co., 351 U.S. 377, 391-392; Times-Picayune v. United States, 345 U.S. 594, 612.)

Page 23,
lines 5-7

To the extent this passage suggests that the defendant Byoir had anything to do with the alleged conspiracy "around the year 1950" it is wholly unsupported by the evidence, which clearly shows that Byoir's activities with respect to explosives did not begin until 1952.

Page 23,
lines 13-21

Defendants object to this passage because it seriously misstates defendants' claims and contentions. Defendants do not "controvert", but on the contrary vigorously assert "that after the war, when the trucking industry began to grow at a rapid rate", the railroads became concerned over the inroads being made on their traffic and each took lawful steps to protect its business.

Page 23,
line 33
to
Page 25,
line 5

It is undisputed that Byoir was hired in 1949. This was before the conspiracy is alleged to have started. (See page 23, lines 4-5). It follows that Byoir's original hiring was not in furtherance of the conspiracy charged. Further there is no allegation or proof that ERPC hired Byoir to conduct "an allegedly false and malicious campaign of publicity against long distance truck carriers of ammunition and explosives." The record is clear, and it is undisputed, that Byoir did nothing whatever with respect to explosives prior to 1952.

Page 23,
line 33,
to
Page 26,
line 18

Defendants object to these instructions as a whole on the ground that they frame the issue in terms of the claims of the parties rather than in terms of the evidence actually in this record and the facts to be found by the jury. They are unnecessary and inappropriate in a charge to the jury, and tend to confuse the jury concerning the real issues in the case. Further, they fail to state that defendants deny each of the plaintiff's claims and they fail to

differentiate the separate defenses of the various defendants.

Page 25,
lines 3-5

Defendants object to the suggestion that a purpose to obtain at least 90% of the business for the railroads is in itself an unlawful purpose.

Page 25,
lines 5-10

Defendants object to this instruction because there is no proof whatever that any defendant "tried. . . to get certain state legislatures to pass" the so-called '5,000 pound bills'".

Page 25,
line 10

Defendants object to the inclusion of the words "abused" and "privilege." Intervention before the Interstate Commerce Commission is a right, not a privilege. The record is absolutely barren of evidence that such a right was "abused" and the Interstate Commerce Commission itself is the only tribunal which, in the first instance, could find any such abuse in any event.

Page 25,
lines 10-16

The proof is that all defendants did not intervene in the I. C. C. proceedings and that not all defendants participated in the alleged public relations activities, whether or not defamatory. Plaintiff has conceded that none of the associations intervened in any I. C. C. proceeding; the southern railroad defendants did not intervene in Sub 60TA or the Safety Cases, and that only a few of the railroad defendants intervened in the PUCO Case.

Page 25,
line 13

The word "defamatory" has a specific legal meaning and it should not be used by the Court in its charge unless that legal meaning is defined for the jury as set forth in Defendants' proposed instructions 5-6A, 5-15, 5-16, 5-16A, 5-16B, 5-16C, 5-16D, 5-16E, 5-16F, 5-16G.

Page 25,
lines 15-16

It is not material whether the ultimate intent of the alleged campaign of defamation was to eliminate plaintiff from transporting commodities other than ammunition and explosives since the only antitrust violation now properly before this jury is a conspiracy to monopolize the transportation of Government ammunition and explosives.

Page 25,
lines 17-21

Defendants object to the suggestion that the elimination of plaintiff's competition would result in the monopolization of the transportation of Government ammunition and explosives (See Tr. Vol. 112, p. 18, 824). The proof shows that plaintiff carried only a small fraction of the ammunition and explosives carried by motor carriers.

Page 25,
lines 22-26

This is an incorrect description of defendants' claims in that it ignores defendants' claim of Constitutional protection. It is further inaccurate in that it implies that all defendants prepared, published and circulated statements concerning plaintiff and other truckers, and fails to make clear that many defendants deny any such activities. Furthermore, to the extent that there is proof that particular defendants engaged in such activities, the instruction does not state their claim that such activities were not part of the alleged conspiracy or intended to monopolize the transportation of Government ammunition and explosives.

Page 25,
lines 28-29

Defendants do not claim that plaintiff "failed to render adequate service as a common carrier", but rather that plaintiff's services were unsatisfactory to a number of shippers, as a result of which plaintiff lost substantial business.

Page 26,
lines 3-5

No defendant now makes such claim since plaintiff failed to introduce evidence in the record that any "state

and local officials" have adopted any such laws or regulations.

Page 26,
lines 5-8

Contrary to the evidence, this passage implies that all defendants intervened in I. C. C. proceedings. The defendants that did intervene in such proceedings do not claim that such interventions were the result of plaintiff's unlawful activities, and have no obligation to prove such fact as the instruction would seem to imply. There is no evidence that any defendant intervened before a regulatory body other than the I. C. C. Particular defendants that intervened in one or more I. C. C. proceedings; complained of by plaintiff, claim that this was done as a matter of right and with the permission of the I. C. C. to protect their own individual business interests and with the intent to obtain action by the I. C. C. authorized by the Interstate Commerce Act.

Page 26,
lines 8-15

This is not just the defendants' contention; it is flatly conceded by plaintiff. (See December 2, 1959 Tr. 154 and 171.)

Page 26,
lines 15-18

The decisions by the courts and agencies referred to in this passage are conclusive. They should not be referred to in terms of a "claim" by defendants.

Page 26,
lines 21-27

The matters described are issues in this case. Moreover, as to each of these issues, the validity of defendants' position has been affirmatively proved.

Page 26,
lines 28-29

This evidence is relevant to issues in addition to purpose and intent. For example, it goes to the truth of the publicity.

Page 26,
lines 29-31

Contrary to the evidence this passage implies that all "railroads" took part in "publicizing these matters".

It does not accurately state the claim of any defendant.

Page 26, line
32 through
Page 27,
line 1

Defendants object to the words "or to unreasonably restrain trade and drive the plaintiff out of the explosives business" as injecting issues not properly in the case. (See Defendants' Memorandum with respect to the Sherman Act aspects of the charge.)

Page 26, line 19
through Page 27,
line 12

In context, this portion of the instructions suggests that the issues of relative hazards, highway damage and cost, public subsidy to the trucking industry, etc., are connected solely with the "public relations activities". Such a suggestion is incorrect since these matters relate directly to the conditions existing in the transportation industry that affected every party to this action.

Page 27,
lines 5-12

This does not constitute a modification of defendants' requested instruction 1-9A. Defendants object to it as a totally inadequate presentation to the jury of the Constitutional issues in this case. It is, of course, defendants' position that the publicity shown in this record is Constitutionally protected regardless of the purpose for which it was issued. However, even if this were not the law, this instruction does not adequately inform the jury concerning the nature and importance of Constitutional safeguards.

Page 27,
lines 13-21

There is no proof in the record from which the jury could "find that the defendants or any of them engaged in an effort to obtain the enactment of any 5,000 pound bills". Further, defendants object to the Court's modifications in defendants' requested instructions 3-1 and 3-2.

Page 28,
1st paragraph,
3rd through 8th
sentence

Defendants object to the inclusion of the words and phrases "in and of itself" (line 8), "in and of themselves" (line 11), "by themselves" (lines 11-12), "alone" (line 13),

"standing by themselves" (line 17), and "mere" (line 18), and further object to the last three sentences in connection with this subject matter.

Participation and intervention in ICC proceedings are lawful acts, are proper, legal, and desirable, and cannot constitute, alone or in conjunction with other acts, evidence of an unlawful intention or an unlawful agreement, regardless of the existence of a "pre-existing conspiracy", and regardless of the purpose or intent of the parties to such intervention and participation. Further, plaintiff has not complained of such intervention or participation, but only of the use thereof in connection with publicity (Opening Statement of Mr. Layne, Tr. 16). The Court's proposed instruction does not embody the substance of defendants' requested instruction 1-7, and defendants object to the denial of their requests 1-7 and 2-6.

Page 28,
2nd paragraph

Defendants object to the inclusion of the phrases "in and of itself" (line 21) and "by itself" (line 23), and to the entire third sentence.

Sponsoring legislation and persuasion of, or attempts to persuade, departments of the government are not unlawful and are not evidence of an unlawful intent, regardless of the motivation of the actors and regardless of what other evidence there may be. Furthermore, such sponsorship and persuasion are protected from infringement by Congress by the First Amendment to the Constitution, and the Sherman Act does not restrict or abridge such activity. Defendants object to the Court's failure to charge their request 1-6D as presented.

Page 28, line 29
through
Page 29, line 30

Defendants object to the phrase "standing by itself" (page 28, lines 30-31); further, to the extent that this instruction deletes portions of or modifies defendants' requested instruction 2-2, defendants object to such deletions and modifications, and object to the failure to grant 2-2 as submitted.

Solicitation of witnesses or testimony in ICC proceedings does not violate the antitrust laws, regardless of any other evidence. Plaintiff does not complain of such solicitation, but only of publicity with respect to the proceeding.

The summary of MC-200, Sub. 84, submitted as defendants' requested instruction 2-2 is more complete and more accurate. The draft instruction prepared by the Court: (1) omits pertinent facts; (2) erroneously describes the consolidation arrangement; (3) erroneously implies that some railroad defendants did not intervene in 1947; (4) erroneously suggests that the 1955 decision of the ICC was not final; and (5) erroneously omits the substance of that decision with respect to plaintiff.

Page 29,
line 30,
through
Page 30,
line 14

Defendants object to the omission of the fourth sentence of defendants' proposed instruction 2-3.

Such fourth sentence included material and undisputed facts necessary to the jury's understanding of the significance of this proceeding.

Pages 30-A
and 30-B

Defendants object to the following:

(1) Failure to include the following as the fourth paragraph:

"It took the Public Utilities Commission a considerable amount of time to get this information together because that Commission felt that verified court

certificates for each of the violations alleged in its complaint were required in order to comply with the order of the Interstate Commerce Commission and to support the complaint in the subsequent hearing before the Interstate Commerce Commission (17707). The PUCO had a small and busy staff (17617 - 17618)."

(2) The fifth paragraph (lines 25-29). The following should be substituted in lieu of this fifth paragraph:

"In its original complaint of July 14, 1952, and in each subsequent amendment thereof, the Public Utilities Commission of Ohio asked the ICC to investigate Riss' fitness (Plaintiff's Exhibit No. 21). In April, 1954, Riss informally asked the ICC to make an investigation of its safety, but the ICC did not make one. On September 8, 1954, the Ohio Commission formally petitioned the ICC to make a general investigation of Riss for the reason that Ohio had reason to believe that Riss had committed violations of the traffic and safety laws of other states and that the files and records of the ICC contained data and information regarding such violations by Riss & Co. (C & O Exhibit No. 7, Tr. 17,634, 17,639)."

(3) The words "declined to revoke or suspend Riss & Co. 's authority" (Page 30-B, line 10). The report of the Commission (Plaintiff's Exhibit No. 24) nowhere so states. Defendants request that lines 8-21 of page 30-B be amended to read as follows:

"By order of the Commission, MC-C-1413 and MC-C-1783 were heard on a joint record in a single hearing. On September 16, 1957, the Interstate Commerce Commission held that the plaintiff was not in compliance with the Interstate Commerce Act or with the rules and regulations prescribed by the Commission relative to safety of operation and equipment. The Interstate Commerce Commission ordered plaintiff to cease and desist from all violations of the Interstate Commerce Act and its rules and regulations, and to bring its operation into compliance with the Act and the Commission's rules and regulations and thereafter to stay in compliance with such Act and regulations. The

Commission stated 'that the proceedings should be held open for such further proceedings as may be warranted'. (Plaintiff's Exhibit No. 24).

The word "substantial" in the phrase "substantial compliance" (lines 11, 14, 19) was not used by the ICC in its findings or order of September 16, 1957.

(4) The inclusion of lines 22-28 (except last four words) of page 30-B, unless amended to read as follows:

"On May 2, 1958 Riss petitioned the ICC for postponement of a scheduled hearing in MC-200 (Sub. 84) as to its fitness, for concurrent consideration of MC-200, (Sub. 84), MC-C-1413 and MC-C-1783, and for expedited termination of proceedings in MC-C-1413 and MC-C-1783 (Plaintiff's Exhibit No. 19). By order dated June 16, 1958 (Plaintiff's Exhibit No. 20), the ICC postponed indefinitely the hearing in Sub. 84, and denied the petition to expedite termination of proceedings in MC-C-1413 and MC-C-1783 for the reason that the petition was premature and sufficient grounds had not been shown why Riss should not be required to observe the full year before which a petition could be filed under the ICC's prior order."

(5) The order of January 27, 1960 (Plaintiff's Exhibit No. 140) made no findings as to Riss' compliance with ICC regulations.

Page 29,
lines 30-32,
and Page 30,
lines 1-20,
(including
pages 30A and
30B)

These pages state in effect that the proceedings in MC-200 (Sub. No. 60TA) and MC-C-1783 were charged as overt acts in the original complaint. This is incorrect. The only ICC proceeding specified in the original complaint was MC-200 (Sub. No. 84), the Explosives Cases. The proceedings in MC-C-1783 did not even commence until 6 months after the original complaint was filed.

Page 30,
lines 16-32,
and page 31,
lines 1-4

These paragraphs define "overt acts" as acts done to "effect the object of the conspiracy". References in the charge to acts of the defendants in these paragraphs as

"overt acts" in effect state to the jury that certain acts of some of the defendants were in fact engaged in pursuant to a conspiracy. This is seriously prejudicial to the defendants.

These paragraphs do not accurately summarize the allegations of plaintiff's complaint of September 22, 1954. Further, defendants object to framing the issues before the jury in terms of plaintiff's complaint, and request the Court to frame the issues in terms of facts which the jury must find.

Page 31,
lines 5-23

Defendants object to this instruction as a whole in that it frames the issues in terms of the claims of the plaintiff rather than in terms of the evidence and the facts to be found by the jury. In particular, the undisputed evidence establishes that the quotation submitted on or about October 20, 1955 did not establish a "uniform" rate, and that to the extent it established the Class 45/Class 36 rate basis complained of by plaintiff such was not done on behalf of all "those railroads engaged in carrying explosives traffic in competition with the plaintiff" but only on behalf of the Eastern railroads in Eastern territory. Plaintiff's evidence shows that the "later quotations issued in March and April, 1956 by the Western and Southern Railroads" were separate, independent quotations, rather than supplements of the October quotation. Some of the railroad defendants did not compete with plaintiff for ammunition and explosives traffic. There is no proof that the Class 45/Class 36 rate basis of which plaintiff complains was "nearly 40% below the general level of rates prevailing for the previous eight years," but rather the evidence is to the contrary.

Plaintiff's claim that the purpose of the rate adjustments was to exclude or eliminate plaintiff as a competitor for the traffic is immaterial. Under any interpretation of the Aircoach case, the intent must at least have been to eliminate the competition of all motor carriers, not just one of them, and the adjustments must at least have been part of the alleged pre-existing conspiracy, before the section 5a immunity is lost. Furthermore, we understand plaintiff now to contend that the rate adjustments were intended to monopolize the business of transporting ammunition and explosives. (Tr. 16, 79 and 7000, last sentence of plaintiff's request 11.)

Page 31, line 24
through
Page 32, line 7

Defendants object to the phrase "defendants claim" (page 31, line 26) as a phrase applying the Department of Defense position (page 31, lines 29-32 and page 32, lines 1 and 2), and to the last sentence (page 32, lines 6 and 7) as applying to that matter.

With respect to the request and position of the Defense Department, there is no issue for the jury to resolve. The evidence as to the position and request of the Defense Department is clear and undisputed.

Page 32,
lines 19-29

Defendants object to the omission of the last sentence of defendants' requested instruction 4-2; to the phrase "when viewed apart from the alleged conspiracy" (lines 20-21), and to the last two sentences of this paragraph.

As we understand the Court's interpretation of the Aircoach case, it is not enough to remove the rate adjustments from the protection of section 5a for the jury to find merely "that these rate practices were part of an effort by the defendants in combination or conspiracy to

eliminate the competition of the plaintiff and other truckers of ammunition and explosives for the United States Government, rather than used merely to meet that competition. " Plaintiff must prove and the jury must find: (1) that the particular defendant in question made or agreed to the rate adjustment with the intent of eliminating rather than meeting all motor-carrier competition for the traffic; and (2) that this was done as a part of the precise pre-existing conspiracy prior to September 22, 1954 of which plaintiff complains, and not just any "combination or conspiracy. " Indeed, this latter requirement is implicit in plaintiff's contention that the rate adjustments were overt acts pursuant to the conspiracy prior to September 22, 1954 of which plaintiff complains. Defendants, of course, object to any instruction that permits the section 5a protection to be disregarded, but this instruction as now written is even more objectionable in that it goes beyond the position adopted by the Court as the law of the case.

Page 32, line 30
through
Page 33, line 22

Defendants object to the first two sentences of this paragraph, and to the modifications made by the Court in defendants' proposed instruction 4-5.

The arrangement and phrasing of the first two sentences suggest that the defendants have a burden of proving that the reductions were made to meet competition, which burden is equal to the burden of proof on the plaintiff. The Court has referred to a "reduction" (page 32, lines 30 and 33; page 33, lines 2 and 5), but the evidence is clear that there are three separate reductions in issue. The Court erroneously omitted the last sentence of defendants' requested instruction 4-5, although defendants understood

this sentence was granted (Tr. 18,959, September 30, 1960).

Page 33,
lines 1-7

Defendants object to lines 1-7 on page 33 on the ground that it permits an improper inference by the jury. Plaintiff must prove that the adjustments in the general rail rate basis were part of a conspiracy in existence prior to September 22, 1954 by evidence independent of and apart from the intent of the rate adjustments. Rate-making pursuant to approved section 5a agreements is relieved from the operation of the antitrust laws and entirely lawful even if intended to obtain a monopoly, at least in the absence of independent evidence that the rates were made as part and in furtherance of a pre-existing conspiracy.

Page 33, line 23
through
Page 34, line 8

Defendants object to the omission of the last phrase of Standard Instruction 18.

Defendants have introduced a great deal of uncontradicted expert testimony, and the jury should be instructed not to reject this testimony "if it is uncontradicted and not inherently unreasonable".

Page 34,
lines 9-21

Defendants object to the first sentence, which modifies defendants' requested instruction 4-3, and to the third sentence, which modifies defendants' requested instruction 4-7.

With respect to the first sentence, the witness Riss in effect agreed that the point-to-point reductions had damaged plaintiff (Tr. 9298-9300), but plaintiff concedes they were made to meet competition. Therefore, request 4-3 is correct and the Court's modification is erroneous. Defendants' requested instruction 4-7 is a clearer and

more accurate statement of the required finding than the Court's modification.

Page 34, line 22
through
Page 35, line 14

Defendants object to the modification of defendants' requested instruction 4-14.

The requirement that the rate adjustments have been made pursuant to the alleged pre-existing conspiracy and the requirement that they have been intended to eliminate motor-carrier competition are separate requirements, and proof that they were intended to eliminate motor-carrier competition does not control the determination of whether they were made pursuant to the alleged pre-existing conspiracy although they could not have been made pursuant to the alleged pre-existing conspiracy if not intended to eliminate motor-carrier competition.

Defendants also object to the omission, from the statement about the compensatory character of the rates, of any reference that this evidence is uncontradicted. Defendants object to the failure of the Court to explain the relevance of this evidence (page 35, lines 1-5).

Without the full substance of defendants' request 4-14, and without further explanation about the compensatory character of the rates, the jury will not properly understand this evidence.

Page 35, line 26
through
Page 36, line 14

Defendants object to the statement (pages 35, lines 26-28) that these rates were not filed with the ICC. Defendants also object to the word "therefore" (page 35, line 29) and the phrase "in and of itself" (page 36, line 2), and to the last two sentences of this paragraph.

Defendants object, of course, to this and to all other instructions to the extent that they permit the jury

to base liability on rate making pursuant to approved section 5a agreements. The instant instruction is objectionable on the further ground that it does not accurately state the holding of the Aircoach case. That decision, as previously interpreted by this Court, requires proof of a purpose or intent to eliminate all motor-carrier competition for the traffic rather than just any "purpose which violates the antitrust laws," and also requires proof that the rate adjustments were made as a part and in furtherance of the alleged conspiracy prior to September 22, 1954.

The rates at this level were filed with the ICC in 1957, and the suggestion that they were not so filed in 1955 and 1956 is misleading unless the 1957 filing is described. The word "therefore" is unnecessary.

Page 36,
lines 5-14

Defendants object to this part of the Court's charge because it permits the jury to hold defendants liable for damages caused by legal or "lawful" rates. (See Keogh v. C. & N. W. Ry. Co., 260 U.S. 156, 162-163, and Georgia v. Pennsylvania R. Co., 324 U.S. 439, 453, which hold that damages may not be recovered in an antitrust action for injury resulting from legal rates, even if such rates were made pursuant to a conspiracy in violation of the antitrust laws.)

Page 36,
lines 17-20

The submission by defendants of their requested instruction 6-1 does not, of course, waive objections by each defendant to certain exhibits not proved to be in furtherance of the conspiracy. (See, for example, Volume 67, Tr. 11, 161-11, 164).

Page 36,
line 31

Defendants object to the deletion of the word "independently" immediately preceding the word "admitted" in modification of defendants' requested instruction 6-1. The prior portion of this paragraph indicates that all of the evidence is admitted against all of the defendants. In this circumstance, the jury must be instructed that in its initial consideration of each defendant the jury must consider only such evidence as was initially and independently admitted against each defendant. This was the form of the Court's charge to the jury given at Volume 69, Tr. 11, 499.

Page 36, line 32
to
Page 37, line 27

Defendants object to the Court's modification in defendants' requested instructions 6-1A and 6-1C on the grounds that the restrictions on the rule of admissibility are not adequately and fairly explained to the jury.

Page 37,
lines 28-30

This instruction is prejudicial in this case, where a specific intent must be proved and cannot be presumed.

Page 40, line 1
through
Page 43, line 10

Defendants object to the general charge on damages on the ground that it does not exclude from the jury's consideration any claim of injury or for damages based on publicity. It is defendants' position that the record contains no evidence of a causal connection between injury or damage and such publicity. Plaintiff has flatly conceded that there was no causal connection between publicity and any loss of government explosives business (Tr. Vol. 44, p. 7472; Vol. 45, pp. 7546-47) and this issue should not be left to the jury.

With respect to general commodities, we had understood that the Court agreed with our position that, as a matter of law, evidence of causal connection was lacking and that damage issues were confined to the

rate cuts (Tr. Vol. 117). If this is still the Court's view, then it is imperative that the jury be so instructed. (See Defendants' Proposed Instructions 5-8, 5-13 and 5-14.) If it is not still the Court's view, then it is imperative that the jury be instructed as to the legal nature of the property right that is involved with respect to publicity and the legal concepts which control any causal relationship between publicity and such property right. (See Defendants' Proposed Instructions 5-6A, 5-15, 5-16 and 5-16A through 5-16G.)

Page 40,
line 7

The word "action" should be limited to actions prohibited by the antitrust laws.

Page 40,
lines 13-19

Plaintiff has made concessions that the order in Sub. 60TA and the end of the Korean War did cause declines in its business. Plaintiff has further conceded that publicity did not cause any decline in its government ammunition and explosives business. These, at least, are not issues that can be decided by the jury.

Page 40,
lines 21-22

In the context of this case, plaintiff must prove that defendants' alleged unlawful acts were a more substantial cause of its losses than any combination of other known factors.

Page 41,
lines 12-20

Defendants object on the ground that plaintiff has sought to measure its damages not by the amount of injury to its good will, but by the amount of the alleged injury to the going concern value of the business of Riss & Co. The Court's use of the term "good will" at lines 14-15 is prejudicial and misleading. To the jury, good will might mean simple reputation, which is not a corporate property interest protected by the law. Defendants object to the

Court's failure to charge the substance of defendants' request 5-2A.

Page 41,
lines 21-27

Defendants object to the enumeration of several factors which the jury may consider, although the Court has refused to enumerate other factors requested by defendants' proposed instruction 5-6. Further, there is no evidence, expert or otherwise, estimating what plaintiff would have earned "absent the alleged actions of the defendants". Neither Mr. Meyers nor Mr. Riss made such an estimate. Further, reference should not be made to plaintiff's past earnings without an instruction that, in determining such past earnings, the jury may modify or disregard plaintiff's books and reports of such earnings because of the effect of the transactions between plaintiff and TM&E and the Riss family. Finally, line 27 implies that there is evidence of "a comparable competitor". Defendants believe there is no such evidence; in any event, the Court should not imply a judgment on this question.

Page 41, line 29
through
Page 42, line 2

Defendants object on the ground that it does not matter whether the jury believes plaintiff has offered "the best available evidence", if such evidence is insufficient to provide a basis for a reasonably accurate estimate in dollars and cents of the amount by which plaintiff's going concern value was lessened by activities of the defendants as distinguished from other causes. Defendants also object to the framing of issues in terms of the claims of the parties.

Page 42,
lines 2-18

Defendants object to the failure of the Court to charge defendants' requested instructions 5-5A, 5-5B, 5-5C and 5-7.

Page 42,
lines 23-31

Defendants object to the Court's modification of
defendants' request 5-17D.

A copy of the draft charge has been appended to the original copy of
these objections filed with the Clerk.

Respectfully submitted,

James H. McGlothlin
Attorney for all parties for purposes
of these objections.

(Certificate of Service omitted)

COVINGTON & BURLING
Union Trust Building

Washington, 5, D. C.
October 13, 1960

Honorable John J. Sirica
United States District Court
For the District of Columbia
Washington, D. C.

Re: Riss & Co., Inc. v. AAR, et al.

Dear Judge Sirica:

This letter is submitted with respect to the Court's proposed instruction in which it cites Kiefer-Stewart v. Seagrams and Budget Dress Corp. v. ILGWU, and to the modification of such instruction proposed in the document served October 11, 1960 entitled "Plaintiff's Memorandum in Opposition".

Neither the Court's proposed instruction nor the modification proposed by the plaintiff is appropriate in this case. Kiefer-Stewart concerned a conspiracy to fix prices, which is a classic per se violation of the antitrust laws. The Fashion Originators Guild case upon which plaintiff relies is a leading case of a conspiracy to boycott, also a classic per se violation. This is not such a case. No per se violation is involved.

For nine months this case has been tried on the basis of assertions by plaintiff's counsel that it does not claim any per se violation of the antitrust laws by the defendants. In that situation the proposed charge, since it is based on the assumption that a per se violation might exist, is prejudicial.

Both the Court's instruction and the plaintiff's suggested modification are particularly prejudicial because they are squarely contrary to the established law of this case. Plaintiff's violations of law were pleaded as affirmative defenses in the answers of many of the defendants. These allegations appear in the pleadings filed with this Court as the "Fourth Defense" in each of the answers of the individual Western railroads, as the "Eleventh Defense" in the answers of the B&O, Erie and PRR, as the "Fourth Defense" in the answers of the C&O and New York Central, and as the "Tenth Defense" in the answer of TEA. These defenses were specifically attacked by a motion of the plaintiff to strike them, filed with this Court on January 27, 1955. The motion asserted that the defenses alleging unlawful conduct did not constitute a defense as a matter of law. A memorandum in support thereto was filed, relying principally upon the Kiefer-Stewart case. The matter was fully briefed to this Court. On March 14, 1955, the defendants whose affirmative answers were thus attacked filed a memorandum in opposition to the motion to strike. Plaintiff filed a reply memorandum on May 2, 1955.

The motion to strike the defenses as insufficient in law and immaterial was argued before Judge Schweinhaut sitting as United State District Court for the District of Columbia on October 20, 1955. Mr. Wright's argument put directly in issue the sufficiency of affirmative defenses of unlawful conduct. He said:

"I take it, by pleading these as affirmative defenses, they are saying that if we show that the plaintiff has committed these violations, we are entitled to prevail. Our motion to strike, of course, is addressed to that contention, which we say is unsound...."
(Tr. p. 5)

* * * * *

"As I understand it, the answers, of course, plead these violations of ours as affirmative defenses, and by that, I take it, they mean, if they mean anything at all, that on proof of these violations, we have a complete defense to your action." (Tr. p. 7)

On November 10, 1955, there was entered in this case by this Court an order denying the motion to strike the affirmative defenses of illegal conduct. In the five years that have elapsed since entry of that order, it has not been challenged by the plaintiff, and the motion has not been renewed. That order by the United States District Court for the District of Columbia is the law of this case. Any instruction that fails to give it full effect would be prejudicial error.

In any event, if the Court wishes to discuss the plaintiff's violations of law in its instructions, the following points should be made:

(a) evidence of law violations by Riss should be considered by the jury in passing upon the question of whether publicity issued by any defendant was defamatory or not, and in determining the intent of such defendant in issuing such publicity.

(b) evidence of law violations by Riss should be considered by the jury in passing upon the intent of any defendant which participated in or presented evidence in the ICC proceedings in which Riss' fitness and safety records were in issue.

(c) evidence of law violations by plaintiff should be considered by the jury in connection with any determination it may make of the amount of plaintiff's damages, inasmuch as plaintiff may not recover damages based on profits received or value built up through illegal operations.

(d) evidence of law violations by plaintiff should be considered by the jury in connection with its determination of the intent of each defendant, in that the jury is entitled to take into consideration the illegal nature of the competition faced by the railroad defendants.

(e) evidence of law violations by plaintiff should be considered by the jury in connection with its determination as to the intent of any defendant which it finds solicited action by any State legislature or regulatory body which might have affected plaintiff or other truckers of dangerous commodities.

The jury should be further instructed that it is the obligation of all citizens to report evidence of law violations to the appropriate authorities, and that if any defendant believed that its business was being harmed by illegal actions of plaintiff, such defendant was justified in presenting evidence of such actions to the ICC and to the general public.

Very truly yours,

(Signed) James H. McGlothlin
James H. McGlothlin
Attorney for all Defendants
For this Purpose Only

JHMcG:cwb
cc: All Counsel of Record

(HEADING OMITTED) Civil Action No. 4056-54 Filed October 13, 1960

ORDER

Plaintiff having filed on September 23, 1960 a Motion for Summary Judgment or a Directed Verdict as to Defendants' Antitrust Counterclaims and defendant-counterclaimants having filed on October 6, 1960 a Memorandum in Opposition thereto, and the Court, on October 7, 1960 having heard argument thereon, it is this 13th day of October, 1960

ORDERED, that the Court will reserve ruling on said Motion until sometime after the conclusion of the case in chief.

/s/ John J. Sirica

United States District Judge

(HEADING OMITTED) Civil Action No. 4056-54 Filed October 14, 1960

DEFENDANTS' PROPOSED SPECIAL INTERROGATORIES TO
THE JURY UNDER RULE 49(b).

QUESTION ONE

Did two or more of the railroad defendants conspire among themselves before September 22, 1954, to monopolize the business of carrying ammunition and explosives for the United States Government?

Yes

No

QUESTION TWO

If your answer to Question One is "Yes", did any act of any defendants pursuant to such conspiracy create what was in fact a dangerous probability that any defendants would acquire monopoly power over the transportation of Government ammunition and explosives?

Yes

No

QUESTION THREE

If your answer to Question One is "Yes", which of the following defendants knowingly joined such conspiracy before September 22, 1954:

Association of American Railroads (AAR)?

Yes No

The Association of Western Railways (AWR)?

Yes No

Atchison, Topeka and Santa Fe Railway Company
("Santa Fe")?

Yes No

Atlantic Coast Line Railroad Company
("Coast Line")

Yes No

Baltimore & Ohio Railroad Company
("B&O")?

Yes No

Carl Byoir & Associates, Inc. (Byoir)?

Yes No

Chesapeake & Ohio Railway Company
("C&O")?

Yes No

Chicago, Burlington & Quincy Railroad Company
("Burlington")?

Yes No

Chicago, Milwaukee, St. Paul & Pacific
Railroad Company ("Milwaukee")?

Yes No

Chicago & Northwestern Railway Company
("Northwestern")?

Yes No

Chicago, Rock Island & Pacific Railroad Company
("Rock Island")?

Yes No

Eastern Railroad Presidents Conference (ERPC)?

Yes No

Erie Railroad Company
("Erie")

Yes No

Great Northern Railway Company
("Great Northern")?

Yes No

Illinois Central Railroad Company
("Illinois Central")?

Yes No

Missouri-Kansas-Texas Railroad Company
("Katy")?

Yes No

Missouri Pacific Railroad Company
("Missouri Pacific")?

Yes No

Minneapolis, St. Paul & Sault Ste. Marie
Railroad Company ("Soo")?

Yes No

The New York Central Railroad Company
("New York Central")?

Yes No

Northern Pacific Railway Company
("Northern Pacific")?

Yes No

The Pennsylvania Railroad Company
("Pennsylvania")?

Yes No

St. Louis-San Francisco Railway Company
("Frisco")?

Yes No

Seaboard Air Line Railroad Company
("Seaboard")?

Yes No

Southern Pacific Company
("Southern Pacific")?

Yes No

Southern Railway Company
("Southern")?

Yes No

Traffic Executive Association - Eastern
Railroads (TEA or TEA-ER)?

Yes No

Union Pacific Railroad Company
("Union Pacific")?

Yes No

Wabash Railroad Company
("Wabash")?

Yes No

QUESTION FOUR

If your answer to Question One is "Yes", was the plaintiff, in fact, injured in its business or property by reason of any act performed

- (a) pursuant to such conspiracy; and
- (b) before the general adjustments in the rail rate bases in October of 1955 and March and April of 1956,

by any defendant with respect to whom you answered "Yes" in Question Two?

Yes No

QUESTION FIVE

Was the Section 22 quotation of 45/36% of the first class rate made by the following railroads in October, 1955, made by the particular railroad with the specific intent to eliminate motor carrier competition for the transportation of Government ammunition and explosives and pursuant to a conspiracy

for this purpose it had entered into before September 22, 1954:

Baltimore & Ohio Railroad Company
("B&O")?

Yes No

The Chesapeake & Ohio Railway Company
("C&O")?

Yes No

Erie Railroad Company
("Erie")?

Yes No

The New York Central Railroad Company
("New York Central")?

Yes No

The Pennsylvania Railroad Company
("Pennsylvania")?

Yes No

QUESTION SIX

Were the Section 22 quotations of 45/36% of the first class rate made by the following railroads in March, 1956, to the extent each such railroad participated in such quotations made by the particular railroad with the specific intent to eliminate motor carrier competition for the transportation of Government ammunition and explosives and pursuant to a conspiracy for this purpose it had entered into before September 22, 1954:

The Atchison, Topeka and Santa Fe Railway
Company ("Santa Fe")?

Yes No

Chicago, Burlington & Quincy Railroad
Company ("Burlington")?

Yes No

Chicago & Northwestern Railway Company
("Northwestern")?

Yes No

Chicago, Milwaukee, St. Paul & Pacific
Railroad Company ("Milwaukee")?

Yes No

Chicago, Rock Island & Pacific
Railroad Company ("Rock Island")?

Yes No

Great Northern Railway Company
("Great Northern")?

Yes No

Illinois Central Railroad Company
("Illinois Central")?

Yes No

Missouri-Kansas-Texas Railroad
Company ("Katy")?

Yes No

Minneapolis, St. Paul & Sault Ste. Marie
Railroad Company ("Soo")?

Yes No

Missouri Pacific Railroad Company
("Missouri Pacific")?

Yes No

Northern Pacific Railroad Company
("Northern Pacific")?

Yes No

St. Louis-San Francisco Railway Company
("Frisco")?

Yes No

Southern Pacific Company
("Southern Pacific")?

Yes No

Union Pacific Railroad Company
("Union Pacific")?

Yes No

Wabash Railroad Company
("Wabash")?

Yes No

QUESTION SEVEN

Was the Section 22 quotation of 45/36% of the first class rate made by the following railroads in April, 1956, made by the particular railroad with the specific intent to eliminate motor carrier competition for the transportation of Government ammunition and explosives and pursuant to a conspiracy for this purpose it had entered into before September 22, 1954:

Atlantic Coast Line Railroad Company
("Coast Line")?

Yes No

Seaboard Air Line Railroad Company
("Seaboard")?

Yes No

Southern Railway Company
("Southern")?

Yes No

QUESTION EIGHT

With respect to any of the following defendants as to which your answer to Question Two was "Yes", did such defendant know that the conspiracy contemplated or embraced a general adjustment in rail rate bases:

Association of American Railroads
("AAR")?

Yes No

The Association of Western Railways
("AWR")?

Yes No

Eastern Railroad Presidents Conference
("ERPC")?

Yes No

Carl Byoir & Associates, Inc.
("Byoir")?

Yes No

QUESTION NINE

Do you allow any damages to plaintiff by reason of any acts performed by defendants before October 17, 1955?

Yes No

QUESTION TEN

Do you allow any damages to plaintiff by reason of the Section 22 quotations of 45/36% of the first class rate made in October, 1955, and March and April, 1956?

Yes No

/s/ James H. McGlothlin
James H. McGlothlin
Attorney for all Defendants for
this purpose.

(Certificate of Service omitted)

(HEADING OMITTED) Civil Action No. 4056-54

DEFENDANTS' PROPOSED FORM OF GENERAL VERDICT

1.

We find for all defendants against plaintiff.

Yes No

2.

We find for plaintiff against each of the following
defendants in the total amount of

\$ _____.

Association of American Railroads (AAR)

Yes No

The Association of Western Railways (AWR)

Yes No

Atchison, Topeka and Santa Fe Railway Company
("Santa Fe")

Yes No

Atlantic Coast Line Railroad Company
("Coast Line")

Yes No

Baltimore & Ohio Railroad Company ("B&O")	<u>Yes</u>	<u>No</u>
Carl Byoir & Associates (Byoir)	<u>Yes</u>	<u>No</u>
Chesapeake & Ohio Railway Company ("C&O")	<u>Yes</u>	<u>No</u>
Chicago, Burlington & Quincy Railroad Company ("Burlington")	<u>Yes</u>	<u>No</u>
Chicago, Milwaukee, St. Paul & Pacific Railroad Company ("Milwaukee")	<u>Yes</u>	<u>No</u>
Chicago & Northwestern Railway Company ("Northwestern")	<u>Yes</u>	<u>No</u>
Chicago, Rock Island & Pacific Railroad Company ("Rock Island")	<u>Yes</u>	<u>No</u>
Eastern Railroad Presidents Conference (ERPC)	<u>Yes</u>	<u>No</u>
Erie Railroad Company ("Erie")	<u>Yes</u>	<u>No</u>
Great Northern Railway Company ("Great Northern")	<u>Yes</u>	<u>No</u>
Illinois Central Railroad Company ("Illinois Central")	<u>Yes</u>	<u>No</u>
Missouri-Kansas-Texas Railroad Company ("Katy")	<u>Yes</u>	<u>No</u>
Missouri Pacific Railroad Company	<u>Yes</u>	<u>No</u>

Minneapolis, St. Paul & Sault Ste. Marie Railroad
Company ("Soo")

Yes No

The New York Central Railroad Company
("New York Central")

Yes No

Northern Pacific Railway Company
("Northern Pacific")

Yes No

The Pennsylvania Railroad Company
("Pennsylvania")

Yes No

St. Louis-San Francisco Railway Company
("Frisco")

Yes No

Seaboard Air Line Railroad Company
("Seaboard")

Yes No

Southern Pacific Company
("Southern Pacific")

Yes No

Southern Railway Company
("Southern")

Yes No

Traffic Executive Association - Eastern
Railroads (TEA or TEA-ER)

Yes No

Union Pacific Railroad Company
("Union Pacific")

Yes No

Wabash Railroad Company
("Wabash")

Yes No

(Certificate of Service
omitted)

James H. McGlothlin
Attorney for all Defendants for this purpose.

(HEADING OMITTED) Civil Action No. 4056-54 Filed October 21, 1960

**DEFENDANTS' OBJECTIONS TO COURT'S
FINAL INSTRUCTIONS TO JURY**

The defendants object to the Court's instructions to the jury on the following grounds:

1. The charge as a whole is prejudicial to a fair consideration of their defenses in that it is based upon the initial claims of the parties rather than on the evidence actually introduced.
2. The charge as a whole is prejudicial to a fair consideration of their defenses in that it states undisputed matters of fact as mere contentions of the said defendants.

The defendants further object:

1. To the denial of each instruction requested by defendants, or any of them, which is not contained in the charge;
2. To the modification of each instruction requested by defendants, or any of them, which is contained in the charge in such modified form;
3. To the elimination of parts of each instruction requested by defendants, or any of them, which is contained in the charge only in part.

In addition, the defendants object to the following specific portions of the proposed instructions for the reasons stated with respect to each such portion:

Page 7,
line 5

Defendants object to the inclusion in the Court's charge of the words, "to unreasonably restrain trade." Plaintiff throughout the trial has maintained the position that the particular violation complained of here is a conspiracy to monopolize the business of transporting ammunition and explosives for the United States. Defendants consider it highly prejudicial to inject a restraint of trade charge at the conclusion of the case. (See Defendants' Memorandum with respect to the Sherman Act aspects of

the charge.) [Renewed]

Page 10,
line 24

Defendants object to the omission in the Court's charge of the sentence in defendants' instruction A-12 which reads as follows: "The duties and authority of the Chairman of TEA are administrative in nature, and he does not have a vote on the rate matters coming before the Association." [Renewed]

Page 11,
line 1

Defendants object to the Court's characterization of the services to be provided by Byoir to ERPC as "certain services." The contract clearly shows that the services were limited to public relations services. [Renewed]

Page 11,
lines 3-22

Defendants object to the modifications of Defendants' Instructions 7-4, 7-4A and 7-4D. Defendants further object that the instruction as given does not inform the jury that the agent must have actual authority to commit his principal to participation in the alleged conspiracy, does not inform the jury that the authority of the agent must be proven by independent evidence and cannot be proven from the acts and declarations sought to be attributed to his principal, and does not inform the jury that the authority of the agent cannot be derived or inferred from the circumstance alone that he is an officer or employee of the corporation or association in question. [Renewed]

Page 12,
lines 1-7

Defendants object to the Court's modification of defendants' instruction 1-24. [Modified]

Page 13,
lines 1-3

Defendants object to the Court's modification of defendants' instruction 7-2. In failing to give defendants' instruction in full, the Court has left the instruction without a full and complete explanation. [Renewed]

Page 13,
lines 28-32,
and page 14,
lines 1-13

Defendants object to the paragraph beginning on line 29 because it contains two references to Section 1 of the Sherman Act (see Defendants' Memorandum with respect to the Sherman Act aspects of the charge.) [Revised]

Page 14,
lines 14-21

Defendants object to the paragraph beginning with line 14 because it introduces the rule of reason. The issue whether a restraint of trade was or was not reasonable is present only when the existence of a restraint is an issue in the case. It is not an issue here (see Defendants' Memorandum with respect to the Sherman Act aspects of the charge.) [Renewed]

Page 14,
line 23
to
Page 15,
line 2

Defendants object to the paragraph beginning on line 23 because it states to the jury that the Act condemns any interference with free competition and "condemns all combinations and conspiracies which restrain the free and natural flow of trade in the channels of interstate commerce." This paragraph conveys to the jury the notion that they may find for the plaintiff if they find a conspiracy existed which restrained in any way the free and natural flow of trade. In this it plainly misstates the governing law, particularly in a regulated industry. [Renewed]

Page 15,
lines 3-21

The definition of monopoly contained in this paragraph is incomplete. The instruction conveys to the jury the idea that defendants would have illegally monopolized the business of ammunition and explosives if truckers had merely been unable to meet rail rates on ammunition which were compensatory to the railroads, i.e., if truckers had merely been unable to compete successfully with the railroads. The essence of monopoly is the acquisition of monopoly power. Monopoly power means the ability to raise rates without

meeting competition, without facing the entry or re-entry of competitors into the business. "Courts have summed up monopoly earmarks as the power to control market prices or exclude competitors." (Attorney General's Committee Report, page 43, citing cases) (emphasis added). The Supreme Court has pointed out "that the material consideration in determining whether a monopoly exists is not that prices are raised and that competition actually is excluded, but that power exists to raise prices or to exclude competition when it is desired to do so." American Tobacco Co. v. United States, 338 U.S. 781 at 811 (1946) (emphasis added). In a conspiracy to monopolize case, the plaintiff must prove that the defendants had the specific intent to obtain monopoly power so defined and further that there was a dangerous probability that they would obtain it. The defendants have the right to have the jury told that these are essential elements of plaintiff's case. [Renewed]

Page 16,
lines 1-17

Defendants object to charging the jury with respect to Section 1 of the Sherman Act. (See Defendants' Memorandum with respect to the Sherman Act aspects of the charge.) [Renewed]

Page 16,
lines 14-17

Defendants object to the illustration which indicates that the existence of a conspiracy to drive a competitor out of business without more, violates the Sherman Act, especially when part of a larger scheme to monopolize, on the ground that the illustration indicates that the mere existence of a combination or a conspiracy to drive a competitor out of business violates the law regardless of whether acts are engaged in which are intended to and which in fact do destroy the business of a competitor.

Furthermore, an agreement or combination to drive a competitor out of business does not necessarily violate the Sherman Act. (See Packard Motor Car Co. v. Webster Motor Car Co., 243 F. 2d 418 (C.A.D.C.).) [Renewed]

Page 16,
lines 18-26

Defendants object to the paragraph beginning at line 18 on the ground that it tells the jury that there are three possible offenses here. (See Defendants' Memorandum with respect to the Sherman Act aspects of the conspiracy.) [Renewed]

Page 17,
lines 1-4

Plaintiff does not charge the use of unlawful means. Hence it would appear there is no occasion for any definition of a conspiracy "to accomplish a lawful objective by unlawful means." [Renewed]

Page 17,
lines 4-5

To be correct, this sentence should read "Although no formal agreement is necessary to constitute a conspiracy, an actual agreement is necessary." [Renewed]

Page 17,
lines 27-31

The record contains no direct evidence of conspiracy, and the jury should be so instructed. See Defendants' requested instruction 1-14. [Renewed]

Page 18,
lines 20-22

Circumstances do not "speak for themselves" unless the facts which make up the circumstances are undisputed or established beyond peradventure. [Renewed]

Page 19,
lines 3-8

More is required to constitute an illegal conspiracy than "that some character or manner of communication take place between them sufficient to enable them to reach a definite, mutual understanding of the common, unlawful objective or purpose to be thereafter accomplished and that they will unite or combine their efforts to that end." Plaintiff must at least prove that they did in fact reach such a mutual understanding, and not merely that circumstances were

sufficient to enable them to reach such an understanding. Furthermore, in the circumstances of this case, plaintiff must prove that a dangerous probability of monopolization was created by acts taken pursuant to this mutual understanding or agreement. [Renewed]

Page 19,
lines 9-10

The formation of a conspiracy does require "simultaneous action or agreement" on the part of at least two conspirators. [Renewed]

Page 20,
lines 19-20
and
lines 23-24

Defendants object to the words "to unreasonably restrain trade." (See Defendants' Memorandum with respect to the Sherman Act aspects of the charge.) [Renewed]

Page 21,
lines 9-19

Defendants object to the Court's modification in defendants' requested instruction 1-20. [Renewed]

Page 21,
lines 20-26

Defendants object to the Court's modification in defendants' requested instruction 1-21. [Renewed]

Page 22,
lines 1-6

This charge permits the jury to infer that a particular defendant knew of the alleged conspiracy, and to use this inference as the basis for a further inference that the particular defendant agreed to participate in the alleged conspiracy, thereby piling inference upon inference contrary to the holding in Direct Sales Co. v. United States, 319 U.S. 703, 711. Defendants further object that this charge permits the jury to infer knowledge from circumstances which can be reasonably explained in terms other than an unlawful intent or motive to monopolize the transportation of Government ammunition and explosives, contrary to the holding in Ingram v. United States, 360 U.S. 672, 679-680. [Renewed]

Page 22,
lines 7-14

Defendants object to the Court's modification in AWR's requested instruction 1-16B. [Renewed]

Page 22,
lines 15-17

The "effect" of a conspiracy cannot in any event be judged merely by looking at the conspiracy, either in its separate parts or as a whole. Such "effect" can only be judged by looking at the impact of acts in furtherance of the conspiracy upon facts extrinsic to the conspiracy. [Renewed]

Page 22,
lines 18-27

Defendants object to this paragraph of the instruction because it merely states plaintiff's claim. While it is appropriate for the Court's instructions to state conflicting claims where each is supported by evidence for the purpose of pointing up issues which the jury is to resolve, it is never proper merely to reiterate in the charge to the jury contentions which the plaintiff plans to make in argument. The instruction does not state the legal effect of this contention and it must be readily apparent that the case would not turn on this point even if it had been proved, which it was not. Reiteration of such claims in the Court's instruction can only give them an added validity in the eyes of the jury and can serve no useful or proper purpose in the case. [Renewed]

Page 22,
line 32
to
Page 23,
line 3

Defendants object to the description of the stated objective as "unlawful." An objective to obtain by lawful means 90% or any other percentage of the available business in the relevant market is not unlawful. To be unlawful, the objective must be to obtain for the parties to the combination (not for all railroads as stated in the charge) the power to control prices in the market and exclude competitors for the business, coupled with an intent to exercise that power.

(United States v. DuPont & Co., 351 U.S. 377, 391-392;
Times-Picayune v. United States, 345 U.S. 594, 612.)
[Renewed]

Page 23,
lines 5-7

To the extent this passage suggests that the defendant Byoir had anything to do with the alleged conspiracy "around the year 1950" it is wholly unsupported by the evidence, which clearly shows that Byoir's activities with respect to explosives did not begin until 1952. [Renewed]

Page 24,
line 1
to
Page 25,
Line 7

It is undisputed that Byoir was hired in 1949. This was before the conspiracy is alleged to have started. (See page 23, lines 4-5). It follows that Byoir's original hiring was not in furtherance of the conspiracy charged. Further there is no allegation or proof that ERPC hired Byoir to conduct "an allegedly false and malicious campaign of publicity against long distance truck carriers of ammunition and explosives." The record is clear, and it is undisputed, that Byoir did nothing whatever with respect to explosives prior to 1952. [Renewed]

Page 24,
line 1
to
Page 25,
line 22

Defendants object to these instructions as a whole on the ground that they frame the issue in terms of the claims of the parties rather than in terms of the evidence actually in this record and the facts to be found by the jury. They are unnecessary and inappropriate in a charge to the jury, and tend to confuse the jury concerning the real issues in the case. Further, they fail to differentiate the separate defenses of the various defendants. [Revised]

Page 24,
lines 7-9

Defendants object to the suggestion that a purpose to obtain at least 90% of the business for the railroads is in itself an unlawful purpose. [Renewed]

Page 24,
lines 9-14

Defendants object to this instruction because there is no proof whatever that any defendant "tried . . . to get . . . certain state legislatures to pass" the so-called '5,000 pound bills. "' [Renewed]

Page 24,
line 14

Defendants object to the inclusion of the word "abused. " The record is absolutely barren of evidence that such right was "abused" and the Interstate Commerce Commission itself is the only tribunal which, in the first instance, could find any such abuse in any event. [Revised]

Page 24,
lines 14-20

The proof is that all defendants did not intervene in the I. C. C. proceedings and that not all defendants participated in the alleged public relations activities. Plaintiff has conceded that none of the associations intervened in any I. C. C. proceedings, the Southern railroad defendants did not intervene in Sub 60TA or the Safety Cases, and that only a few of the railroad defendants intervened in the PUCO case. The subsequent instruction [line 31] does not cure this error. [Revised]

Page 24,
lines 19-20

It is not material whether the ultimate intent of the alleged campaign of defamation was to eliminate plaintiff from transporting commodities other than ammunition and explosives since the only antitrust violation now properly before this jury is a conspiracy to monopolize the transportation of Government am munition and explosives. [Renewed]

Page 24,
lines 24-25

Defendants object to the suggestion that the elimination of plaintiff's competition would result in the monopolization of transportation of Government ammunition and explosives (See Tr. Vol. 112, p. 18, 824). The proof shows that plaintiff carried only a small fraction of the ammunition and explosives carried by motor carriers. [Renewed]

Page 25,
lines 26-31

This is an incorrect description of defendants' claims in that it ignores defendants' claim of Constitutional protection. [Revised]

Page 25,
lines 2-3

Defendants do not claim that plaintiff "failed to render adequate service as a common carrier," but rather that plaintiff's services were unsatisfactory to a number of shippers, as a result of which plaintiff lost substantial business. [Renewed]

Page 25,
lines 8-12

The defendants that did intervene in such proceedings do not claim that such interventions were the result of plaintiff's unlawful activities, and have no obligation to prove such fact as the instruction would seem to imply. There is no evidence that any defendant intervened before a regulatory body other than the I. C. C. Particular defendants that intervened in one or more I. C. C. proceedings complained of by plaintiff, claim that this was done as a matter of right and with the permission of the I. C. C. to protect their own individual business interests and with the intent to obtain action by the I. C. C. authorized by the Interstate Commerce Act. [Revised]

Page 25,
lines 12-19

This is not just the defendants' contention; it is flatly conceded by the plaintiff. (See December 2, 1959 Tr. 154 and 171.) [Renewed]

Page 25,
lines 19-22

The decisions by the courts and agencies referred to in this passage are conclusive. They should not be referred to in terms of a "claim" by defendants. [Renewed]

Page 25,
lines 25-31

The matters described are issues in this case. Moreover, as to each of these issues, the validity of defendants' position has been affirmatively proved. [Renewed]

Page 25,
line 32,
to
Page 26,
line 1

This evidence is relevant to issues in addition to purpose and intent. For example, it goes to the truth of the publicity. [Renewed]

Page 26,
lines 1-3

Contrary to the evidence this passage implies that all "railroads" took part in "publicizing these matters." It does not accurately state the claim of any defendant. [Renewed]

Page 26,
lines 4-5

Defendants object to the words "or to unreasonably restrain trade and drive the plaintiff out of the explosives business" as injecting issues not properly in the case. (See Defendants' Memorandum with respect to the Sherman Act aspects of the charge.) [Renewed]

Page 25, line 19
through Page 26,
line 16

In context, this portion of the instructions suggests that the issues of relative hazards, highway damage and cost, public subsidy to the trucking industry, etc., are connected solely with the "public relations activities." Such a suggestion is incorrect since these matters relate directly to the conditions existing in the transportation industry that affected every party to this action. [Renewed]

Page 26,
lines 9-16

This does not constitute a modification of defendants' requested instruction 1-9A. Defendants object to it as a totally inadequate presentation to the jury of the Constitutional issues in this case. It is, of course, defendants' position that the publicity shown in this record is Constitutionally protected regardless of the purpose for which it was issued. However, even if this were not the law, this instruction does not adequately inform the jury concerning the nature and importance of Constitutional safeguards. [Renewed]

Page 26,
lines 17-26

There is no proof in the record from which the jury could "find that the defendants or any of them engaged in an effort to obtain the enactment of any 5,000 pound bills." Further, defendants object to the Court's modifications in defendants' requested instructions 3-1 and 3-2. [Renewed]

Page 28,
lines 12-25

Defendants object to the inclusion of the words and phrases "in and of itself" (line 13), "in and of themselves" (line 16), "by themselves" (line 16), "by themselves" (lines 16-17), "alone" (line 18), "standing by themselves" (line 22), and "mere" (line 23), and further object to the last three sentences in connection with this subject matter.

Participation and intervention in ICC proceedings are lawful acts, are proper, legal, and desirable, and cannot constitute, alone or in conjunction with other acts, evidence of an unlawful intention or an unlawful agreement, regardless of the existence of a "pre-existing conspiracy," and regardless of the purpose or intent of the parties to such intervention and participation. Further, plaintiff has not complained of such intervention or participation, but only of the use thereof in connection with publicity (Opening Statement of Mr. Layne, Tr. 16). The Court's proposed instruction does not embody the substance of defendants' requested instruction 1-7, and defendants object to the denial of their requests 1-7 and 2-6. [Renewed]

Page 28,
lines 26-32

Defendants object to the inclusion of the phrases "in and of itself" (line 26) and "by itself" (line 27-38), and to the entire third sentence, (lines 29-32).

Sponsoring legislation and persuasion of, or attempts to persuade, departments of the government are not unlawful and are not evidence of an unlawful intent, regardless of the

motivation of the actors and regardless of what other evidence there may be. Furthermore, such sponsorship and persuasion are protected from infringement by Congress by the First Amendment to the Constitution, and the Sherman Act does not restrict or abridge such activity. Defendants object to the Court's failure to charge their request 1-6D as presented. [Renewed]

Page 28,
line 2
through
Page 29,
line 32

Defendants object to the phrase "standing by itself" (page 28, line 4); further, to the extent that this instruction deletes portions of or modifies defendants' requested instruction 2-2, defendants object to such deletions and modifications, and object to the failure to grant 2-2 as submitted.

Solicitation of witnesses or testimony in ICC proceedings does not violate the antitrust laws, regardless of any other evidence. Plaintiff does not complain of such solicitation, but only of publicity with respect to the proceeding.

The summary of MC-200, Sub 84, submitted as defendants' requested instruction 2-2 is more complete and more accurate. The draft instruction prepared by the Court: (1) omits pertinent facts; (2) erroneously describes the consolidation arrangement; (3) erroneously implies that some railroad defendants did not intervene in 1947; and (4) erroneously omits the substance of that decision with respect to plaintiff. [Revised]

Page 29,
lines 3-19

Defendants object to the omission of the fourth sentence of defendants' proposed instruction 2-3.

Such fourth sentence included material and undisputed facts necessary to the jury's understanding of the significance of this proceeding. [Renewed]

Page 29,
line 20
to
Page 31,
line 23

Defendants object to the following:

(1) Failure to include the following after Page 30,

line 7:

"It took the Public Utilities Commission a considerable amount of time to get this information together because that Commission felt that verified court certificates for each of the violations alleged in its complaint were required in order to comply with the order of the Interstate Commerce Commission and to support the complaint in the subsequent hearing before the Interstate Commerce Commission (17707). The PUCO had a small and busy staff (17617-17618)."

(2) Page 30, lines 12-16.

The following should be substituted in lieu of this:

"In its original complaint of July 14, 1952, and in each subsequent amendment thereof, the Public Utilities Commission of Ohio asked the ICC to investigate Riss' fitness (plaintiff's Exhibit No. 21). In April, 1954, Riss informally asked the ICC to make an investigation of its safety, but the ICC did not make one. On September 8, 1954, the Ohio Commission formally petitioned the ICC to make a general investigation of Riss for the reason that Ohio had reason to believe that Riss had committed violations of the traffic and safety laws of other states and that the files and records of the ICC contained data and information regarding such violations by Riss & Co. (C & O Exhibit No. 7, Tr. 17,634, 17,639)."

(3) Defendants request that page 30, line 27, through page 31, line 7, be amended to read as follows:

"By order of the Commission, MC-C-1413 and MC-C-1783 were heard on a joint record in a single hearing. On September 16, 1957, the Interstate Commerce Commission held that the plaintiff was not in compliance with the Interstate Commerce Act or with the rules and regulations prescribed by the Commission

relative to safety of operation and equipment. The Interstate Commerce Commission ordered plaintiff to cease and desist from all violations of the Interstate Commerce Act and its rules and regulations, and to bring its operation into compliance with the Act and the Commission's rules and regulations and thereafter to stay in compliance with such Act and regulations. The Commission stated 'that the proceedings should be held open for such further proceedings as may be warranted. '" (Plaintiff's Exhibit No. 24).
[Revised]

Page 29,
line 20 -
page 30,
line 37

There pages state ineffect that the proceedings in MC-200 (Sub No. 60TA) and MC-C-1783 were charged as overt acts in the original complaint. This is incorrect. The only ICC proceeding specified in the original complaint was MC-200 (Sub No. 84), the Explosives Cases. The proceedings in MC-C-1783 did not even commence until 6 months after the original complaint was filed. [Renewed]

Page 31,
line 24 -
Page 32,
line 15

These paragraphs define "overt acts" as acts done to "effect the object of the conspiracy. " References in the charge to acts of the defendants in these paragraphs as "overt acts" in effect state to the jury that certain acts of some of the defendants were in fact engaged in pursuant to a conspiracy. This is seriously prejudicial to the defendants.

These paragraphs do not accurately summarize the allegations of plaintiff's complaint of September 22, 1954. Further, defendants object to framing the issues before the jury in terms of plaintiff's complaint, and request the Court to frame the issues in terms of facts which the jury must find. [Renewed]

Page 32,
line 16-
Page 33,
line 2

Defendants object to this instruction as a whole in that it frames the issues in terms of the claims of the plaintiff rather than in terms of the evidence and the facts to be found by the jury. In particular, the undisputed evidence establishes that the quotation submitted on or about October 20, 1955 did not establish a "uniform" rate, and that to the extent it established the Class 45/Class 36 rate basis complained of by plaintiff such was not done on behalf of all "those railroads engaged in carrying explosives traffic in competition with the plaintiff" but only on behalf of the Eastern railroads in Eastern territory. Plaintiff's evidence shows that the "later quotations issued in March and April, 1956 by the Western and Southern Railroads." were separate, independent quotations, rather than supplements of the October quotation. Some of the railroad defendants did not compete with plaintiff for ammunition and explosives traffic. There is no proof that the Class 45/Class 36 rate basis of which plaintiff complains was "nearly 40% below the general level of rates prevailing for the previous eight years," but rather the evidence is to the contrary. Plaintiff's claim that the purpose of the rate adjustments was to exclude or eliminate plaintiff as a competitor for the traffic is immaterial. Under any interpretation of the Aircoach case, the intent must at least have been to eliminate the competition of all motor carriers, not just one of them, and the adjustments must at least have been part of the alleged pre-existing conspiracy, before the section 5a immunity is lost. Furthermore, we understand plaintiff now to contend that the rate adjustments were intended to monopolize the business of transporting ammunition

and explosives. (Tr. 16, 79 and 7000, last sentence of plaintiff's request 11.) [Renewed]

Page 3,
lines 3-19

Defendants object to the phrase "defendants claim" (page 3, line 5) as a phrase applying the Department of Defense position (page 3, lines 8-13 and page 32, lines 1 and 2), and to the last sentence (page 3, lines 18 and 19) as applying to that matter.

With respect to the request and position of the Defense Department, there is no issue for the jury to resolve. The evidence as to the position and request of the Defense Department is clear and undisputed. [Renewed]

Page 33,
line 20-
Page 34,
line 8

Defendants object to the omission of the last sentence of defendants' requested instruction 4-2; to the phrase "when viewed apart from the alleged conspiracy" (page 33, line 32 to Page 34, line 1), and to the last two sentences of this paragraph.

As we understand the Court's interpretation of the Aircoach case, it is not enough to remove the rate adjustments from the protection of section 5a for the jury to find merely "that these rate practices were part of an effort by the defendants in combination or conspiracy to eliminate the competition of the plaintiff for the United States Government, rather than used merely to meet that competition." Plaintiff must prove and the jury must find: (1) that the particular defendant in question made or agreed to the rate adjustment with the intent of eliminating rather than meeting all motor-carrier competition for the traffic; and (2) that this was done as a part of the precise pre-existing conspiracy prior to September 22, 1954 of which plaintiff complains, and not just any "combination or conspiracy."

Indeed, this latter requirement is implicit in plaintiff's contention that the rate adjustments were overt acts pursuant to the conspiracy prior to September 22, 1954 of which plaintiff complains. Defendants, of course, object to any instruction that permits the Section 5a protection to be disregarded, but this instruction as now written is even more objectionable in that it goes beyond the position adopted by the Court as the law of the case. [Revised]

Page 34,
lines 9-32

Defendants object to the first sentence of this paragraph, and to the modifications made by the Court in defendants' proposed instruction 4-5. The first sentence misstates defendants' claim. [Revised]

Page 35, lines
4-21

Defendants object to the omission of the last phrase of Standard Instruction 18.

Defendants have introduced a great deal of uncontradicted expert testimony, and the jury should be instructed not to reject this testimony "if it is uncontradicted and not inherently unreasonable". [Renewed]

Page 35, line
22
through
Page 36, line 2

Defendants object to the first sentence, which modifies defendants' requested instruction 4-3, and to the third sentence, which modifies defendants' requested instruction 4-7. Defendants' requested instruction 4-7 is a clearer and more accurate statement of the required finding than the Court's modification. [Revised]

Page 36,
lines 3-28

Defendants object to the modification of defendants' requested instruction 4-14.

The requirement that the rate adjustments have been made pursuant to the alleged pre-existing conspiracy and the requirement that they have been intended to eliminate motor-carrier competition are separate requirements, and

proof that they were intended to eliminate motor-carrier competition does not control the determination of whether they were made pursuant to the alleged pre-existing conspiracy although they could not have been made pursuant to the alleged pre-existing conspiracy if not intended to eliminate motor-carrier competition.

Defendants also object to the omission, from the statement about the compensatory character of the rates, of any reference that this evidence is uncontradicted. Defendants object to the failure of the Court to explain the relevance of this evidence (page 35, lines 15-18).

Without the full substance of defendants' request 4-14, and without further explanation about the compensatory character of the rates, the jury will not properly understand this evidence.

Page 37,
lines 9-26

Defendants object to the phrase "in and of itself" (page 37, line 13), and to the last two sentences of this paragraph.

Defendants object, of course, to this and to all other instructions to the extent that they permit the jury to base liability on rate making pursuant to approved section 5a agreements. The instant instruction is objectionable on the further ground that it does not accurately state the holding of the Aircoach case. That decision, as previously interpreted by this Court, requires proof of a purpose or intent to eliminate all motor-carrier competition for the traffic rather than just a competitor, and also requires proof that the rate adjustments were made as a part and in furtherance of the alleged conspiracy prior to September 22, 1954.

The rates at this level were filed with the ICC in 1957, and the suggestion that they were not so filed in 1955 and 1956 is misleading unless the 1957 filing is described. The word "therefore" is unnecessary. [Revised]

Page 37,
lines 16-26

Defendants object to this part of the Court's charge because it permits the jury to hold defendants liable for damages caused by legal or "lawful" rates. (See Keogh v. C. & N. W. Ry. Co., 260 U.S. 156, 162-163, and Georgia v. Pennsylvania R. Co., 324 U.S. 439, 453, which hold that damages may not be recovered in an antitrust action for injury resulting from legal rates, even if such rates were made pursuant to a conspiracy in violation of the anti-trust laws.) [Renewed]

Page 37,
lines 29-32

The submission by defendants of their requested instruction 6-1 does not, of course, waive objections by each defendant to certain exhibits not proved to be in furtherance of the conspiracy. (See, for example, Volume 67, Tr. 11, 161 - 11, 164). [Renewed]

Page 38, line 12
to
Page 39, line 7

Defendants object to the Court's modification in defendants' requested instructions 6-1A and 6-1C on the grounds that the restrictions on the rule of admissibility are not adequately and fairly explained to the jury. [Renewed]

Page 39,
lines 8-10

This instruction is prejudicial in this case, where a specific intent must be proved and cannot be presumed. [Renewed]

Page 42,
lines 5-13

Defendants object on the ground that plaintiff has sought to measure its damages not by the amount of injury to its good will, but by the amount of the alleged injury to the going concern value of the business of Riss & Co. The Court's use of the term "good will" at line 6 and line 9 is

prejudicial and misleading. To the jury, good will might mean simple reputation, which is not a corporate property interest protected by the law. Defendants object to the Court's failure to charge the substance of defendants' request 5-2A. [Renewed]

Page 42,
lines 14-19

Defendants object to the enumeration of several factors which the jury may consider, although the Court has refused to enumerate other factors requested by defendants' proposed instruction 5-6. Further, there is no evidence, expert or otherwise, estimating what plaintiff would have earned "absent the alleged actions of the defendants". Neither Mr. Meyers nor Mr. Riss made such an estimate. Further, reference should not be made to plaintiff's past earnings without an instruction that, in determining such past earnings, the jury may modify or disregard plaintiff's books and reports of such earnings because of the effect of the transactions between plaintiff and TM&E and the Riss family. Finally, line 19 implies that there is evidence of "a comparable competitor". Defendants believe there is no such evidence; in any event, the Court should not imply a judgment on this question. [Renewed]

Page 42, line 21
through
Page 43, line 27

Defendants object on the ground that it does not matter whether the jury believes plaintiff has offered "the best available evidence", if such evidence is insufficient to provide a basis for a reasonably accurate estimate in dollars and cents of the amount by which plaintiff's going concern value was lessened by activities of the defendants as distinguished from other causes. Defendants also object to the framing of issues in terms of the claims of

the parties. [Renewed]

Page 42,
line 27

Defendants object to the failure of the Court to
charge defendants' requested instructions 5-5C and 5-7.
[Revised]

Page 43,
lines 23-31

Defendants object to the Court's modification of
defendants' request 5-17D. [Renewed]

Respectfully submitted,

/s/ James H. McGlothlin

James H. McGlothlin

Attorney for all parties for purposes
of these objections.

(Certificate of Service
omitted)

(HEADING OMITTED) Civil Action No. 4056-54 Filed October 24, 1960
ADDITIONS AND MODIFICATIONS TO FINAL INSTRUCTIONS
TO JURY

Page 34, line 10, has been changed to read:

"were in fact made only to meet the competition
afforded by the plaintiff and other truckers,..."

Page 37, line 20, has been changed to read:

"the competition of plaintiff or all truckers or
were to meet that..."

(HEADING OMITTED) Civil Action No. 4056-54 Filed October 24, 1960
ADDITIONS AND MODIFICATIONS TO FINAL INSTRUCTIONS
TO JURY

The following previously requested instruction by plaintiff will be
granted as amended. Please insert on page 25, line 8:

"Communities through which its trucks passed. 'In regard to
the evidence relating to certain violations of state and federal
laws by plaintiff company, the evidence on these matters may
be considered by you in your determination of defendants' in-
tent. However, you should keep in mind that the existence of
such violations is not a defense to the plaintiff's charge that
the defendants have violated the antitrust laws by conspiring
to eliminate the plaintiff from competing with them or to
monopolize the business in which plaintiff was offering such

competition. Evidence of such violations has been admitted only for the purpose of permitting the fullest exploration of the defendants' purpose and intent. '"

(Keifer-Stewart Co. v. Seagram & Sons, 340 U.S. 211;
Budget Dress Corp. v. L L. G. W. U., 25 F.R.D. 506, 508-09
(S. D. N. Y. 1959)

"If you find that two or more defendants did in fact conspire to eliminate plaintiff's competition in, or to monopolize the business of transporting explosives for the Government, then a belief by those defendants, no matter how sincerely held, that they were thereby acting in the public interest would not legalize such a conspiracy or immunize defendants against liability. I do not, of course, intimate, in giving this or any other instruction, any opinion as to whether the evidence has established that there was or was not such a conspiracy. "
(Fashion Originators Guild v. Federal Trade Commission, 312 U.S. 457, 467).

Page 23, the last paragraph is amended to read as follows:

"You will recall hearing testimony, which neither side has any disagreement with, that during the period embracing the Second World War, the railroads of the nation had approximately 90% or more of the business of hauling explosives for the United States Government. After the war the trucking industry began to grow at a rapid rate. Evidence relating to the competitive situation at this time is permitted and competent under the law merely for the purpose of throwing light, if it does throw any light, in your opinion, upon subsequent events. This is true also regarding the evidence relating to the so-called reparations cases, which concerned rates which were charged by the railroads during the Second World War. This historical evidence is admitted for your consideration--you are the judges as to whether these matters throw any light upon the acts alleged here and aid you in any way in interpreting them and understanding them.
(American Tobacco Co. v. U.S., 328 U.S. 781, tr. p. 6353, as modified.)

Page 39, second paragraph, beginning with line 8, Plaintiff's Instruction 23 is modified to read as follows:

"Every person is presumed to intend the natural and probable consequences of his voluntary acts."

(HEADING OMITTED) Civil Action No. 4056-54 Filed October 25, 1960

ADDITION TO FINAL INSTRUCTIONS TO JURY

The following instruction will be inserted on page 43-A, immediately before the final paragraph:

"There is another rule of law that may be of help to you and that is pertinent to this case. If a witness is not produced who is peculiarly available to one side or the other, or to any particular party to this litigation, then the jury has a right, if it wishes to do so--and it is entirely within the jury's discretion--to draw the inference that the testimony of that absent witness, the witness who is not called, would be unfavorable to the party that has failed to call the witness, unless the absence of the witness is sufficiently accounted for or explained.

You will notice in this instruction that the words "peculiarly available" are used. It is for the jury to decide whether or not any of the persons whose names have been mentioned by counsel in their argument to you are peculiarly available to any party in this litigation.

In connection with this matter, you will recall that I informed you on several occasions during the trial that when any party calls a witness to the witness stand to testify on its behalf, that party vouches for the credibility of that witness. In other words, the party calling that witness in effect tells the jury that we want or hope that you believe this witness and accept his testimony as truthful.

Sometimes it happens that a party will call what is known as an unwilling, unfriendly or hostile witness to the stand, and instead of vouching for the credibility of that witness he may, with

the permission of the court, proceed to cross-examine that witness and treat him as an adverse witness. You will remember that that was done by one of the plaintiff's attorneys in this case in connection with one of the witnesses he called to the stand.

You should also keep in mind that any party to this litigation can have a subpoena issued from the clerk's office of this court directed to any witness who lives within a radius of one hundred miles of this jurisdiction, and have that person brought to court to testify. Besides, any party has the right, as you have learned during this trial, to take the deposition of any person no matter where he might reside in this country. Any party may go to the clerk's office in any federal court located in any state, if he desires to take the deposition of a witness who will not appear voluntarily, and have a subpoena issued from that federal court directing that person to appear at a stated time and place and for the purpose of taking his deposition by oral examination, provided that person resides within 100 miles of that federal court.

You should also consider, in connection with this matter, whether or not any person whose name is mentioned, and who has not been called as a witness, and whether or not if that person were called as a witness, in your opinion, he might give testimony that may be material to any issue or issues in this case. If a person has been in the courtroom during this trial and reference to his name has been made by any attorney, that person was available and could have been called by any party in this case to the witness stand, whether he be a layman or an attorney, and questions propounded to him.

A witness is not peculiarly available to a party unless there

is some legal relationship between the witness and the party, such as an employment relationship. This relationship must have been in existence during the course of the trial. Just because a witness might be peculiarly available to a particular party in this case does not mean that he is peculiarly available to all parties. A party does not incur the consequence of the absent witness rule merely because he fails to put on the stand a witness not deemed necessary to his case.

(Bellici v. U.S., 87 U.S. App. D. C., 273. See also Richards v. U.S., 107 U.S. App. D. C. 197)

(HEADING OMITTED) Civil Action No. 4056-54 Filed October 26, 1960

DEFENDANTS' OBJECTIONS TO THE AMENDMENTS
TO THE COURT'S FINAL INSTRUCTIONS TO THE JURY

Defendants object to the following amendments to the Court's instructions to the jury served upon them on October 24, 1960, for the reasons stated with respect to each such objection:

Insert
Page 25
line 8

Defendants object to this addition to the charge for the reasons stated in Mr. McGlothlin's letter of October 13, 1960, filed on behalf of all defendants.

Defendants further object to the first section of this additional charge on the grounds that it is erroneous in that it limits consideration of plaintiff's violations of the law to the issue of intent and fails specifically to instruct the jury that such violations may be considered in determining the truth of the publicity issued by some defendants.

Defendants further object to the second portion of this additional charge in that it is erroneous in permitting the jury to infer that defendants had improper motives,

even if the jury finds that the proof demonstrates that the defendants' motive was to advance the public interest, a proper and lawful motive.

Page 34,
lines 9-12

This sentence, as amended, continues to mistate defendants' claim. Defendants claim that the reductions in their rates were made to meet the competition afforded by motor carriers. The reasons why a statement of their claim in terms of meeting the competition of the plaintiff is erroneous are set forth in defendants' prior objection to the unamended statement.

Page 39,
lines 8-10

This instruction is prejudicial in this case where a specific intent must be proved and cannot be presumed.

This instruction is also prejudicial in view of the fact that the Court has failed to further instruct the jury in the following terms:

You are further instructed that where a party performs a lawful act it is presumed that such party intends only the lawful consequences of such lawful act.

Respectfully submitted,

/s/ James H. McGlothlin

James H. McGlothlin

Attorney for all parties for purposes of these objections.

(Certificate of Service
omitted)

Pages 1050 to 1064 omitted.